

02-334-CD
JOSEPH F. KANE et al -vs- JOSEPH R. KONDISKO et al

Date: 10/24/2002

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 09:36 AM

ROA Report

Page 1 of 1

Case: 2002-00334-CD

Current Judge: Fredric J. Ammerman

Joseph F. Kane, Conservco vs. Joseph R. Kondisko, Allana M. Kondisko, K-Management Group, Inc., Burger King
Civil Other

Date		Judge
03/05/2002	Filing: Civil Complaint Paid by: Shaw, William A. Jr. (attorney for Kane, Joseph F.) Receipt number: 1839179 Dated: 03/05/2002 Amount: \$80.00 (Check) Four CC Attorney Shaw	No Judge ✓
04/11/2002	Sheriff Return, Now, April 4, 2002, Complaint returned marked "NOT FOUND", this address is a parking lot. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge ✓
04/19/2002	Filing: Praecipe to Reissue Writ/Complaint Paid by: Shaw, William A. Jr. (attorney for Conservco) Receipt number: 1841364 Dated: 04/19/2002 Amount: \$7.00 (Check) 1 Complaint Reinstated to Sheriff	No Judge ✓
06/10/2002	Praecipe for Entry of Appearance on behalf of Defendants. Filed by s/Peter F. Smith, Esq.	No Judge ✓
	Preliminary Objections. Filed by s/Peter F. Smith, Esq.	No Judge ✓
	Certificate of Service, Preliminary Objections adn Praecipe Entering Appearance, upon William A. Shaw, Jr., Esq. Filed by s/Peter F. Smith, Esq.	No Judge ✓
06/12/2002	Sheriff Return of Service filed. May 20, 2002, complaint served on Joseph R. Konkisko. s/Chester Hawkins	No Judge ✓
06/25/2002	Amended Complaint. Filed by s/William A. Shaw, Jr., Esq. Verification s/Joseph F. Kane Certificate of Service 4 cc Atty Shaw	No Judge ✓
07/08/2002	Renewed Preliminary Objections, filed by s/Peter F. Smith, Esq. Two CC Attorney Smith	No Judge ✓
	Certificate of Service, filed by Atty. Smith Sent by 1st class mail to William A. Shaw, Jr., Cert. Copy of Renewed Preliminary Objections on July 5, 2002. No Cert. Copies.	No Judge ✓
09/24/2002	ORDER, AND NOW, this 24th day of Sept., 2002, re: Argument on Defendant's Renewed Preliminary Objections scheduled for Tuesday, Oct. 29, 2002, at 11:00 a.m. by the Court, s/FJA, J. 1 cc Atty P. Smith, Atty W. Shaw, Jr.	Fredric J. Ammerman ✓

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(Civil Division)

JOSEPH F. KANE, d/b/a/ Conservco

v.

JOSEPH R. KONDISKO and ALLANA M.
KONDISKO, K-MANAGEMENT GROUP, INC.,
d/b/a/ Burger King

:
:
:
:
:
:
:
:

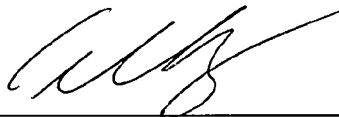
334
No. 02-344-CD

PRAECIPE TO REINSTATE COMPLAINT

TO THE PROTHONOTARY:

Kindly reinstate the complaint filed in the above captioned matter.

Respectfully Submitted,



William A. Shaw, Jr., Esquire
Attorney for Plaintiff

FILED

APR 18 2007

William A. Shaw
Prothonotary

FILED

APR 18 2002

01/2:45 p.m.

William A. Shaw
Prothonotary

1 Compl. Remitted to Staff
EJS

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12220

KANE, JOSEPH F. d/b/a CONSERVCO

02-334-CD

VS.

KONDISKO, JOSEPH R. & ALLANA M. AI

COMPLAINT

SHERIFF RETURNS

NOW MARCH 19, 2002, BOB KOKLAR, SHERIFF OF CAMBRIA COUNTY WAS
DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY
TO SERVE THE WITHIN COMPLAINT ON JOSEPH R. KONDISKO & ALLANA M.
KONDISKO, K-MANAGEMENT GROUP, INC. d/b/a BURGER KING, DEFENDANT.

NOW APRIL 4, 2002 ATTEMPTED TO SERVE THE WITHIN COMPLAINT ON
JOSEPH R. KONDISKO & ALANA M. KONDISKO, K-MANAGEMENT GROUP, INC. d/b/a
Burger King, DEFENDANT BY DEPUTIZING THE SHERIFF OF CAMBRIA COUNTY.
THE RETURN OF SHERIFF KOLAR IS HERETO ATTACHED AND MADE A PART OF
THIS RETURN MARKED "NOT FOUND". THIS ADDRESS IS A PARKING LOT

Return Costs

Cost	Description
25.34	SHFF. HAWKINS PAID BY: ATTY.
24.30	SHFF. KOLAR PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

FILED

APR 11 2002

01/11/28/ am
William A. Shaw
Prothonotary

Sworn to Before Me This

14th Day Of April 2002

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
Chester A. Hawkins
Sheriff

CASE # PLAINTIFF
90087-02 KANE, JOSEPH D/B/A CONSERVCO
DATE 4/04/02

DEFENDANT
KONDISKO, JOSEPH & 02-334

NOT FOUND AS TO THE WITHIN NAMED DEFENDANT JOSEPH R.
KONDISTKO AND ALLANA M. KONDISKO, K MANAGEMENT D/B/A
BURGER KING BY BOB KOLAR, SHERIFF OF CAMBRIA CO. PA.
THE ADDRESS OF 918 MAIN ST. PORTAGE, PA. IS A PARKING LOT.
MY COSTS PAID BY ATTORNEY FOR PLAINTIFF.

SHERIFF COSTS 21.30
PROTHONATARY 3.00
TOTAL COSTS 24.30

SO ANSWERS,

Bob Kolar

BOB KOLAR, SHERIFF

SWORN AND SUBSCRIBED TO BEFORE ME THIS 8TH DAY OF APRIL, 02.

.
.
.
.
.
.
PROTHONATARY

Patty Berkebile

U I T E R I

BOB KOLAR, SHERIFF
CAMBRIA COUNTY
PENNSYLVANIA

BOB KOLAR, SHERIFF	CIVIL REC & DOCKETING & R	9.00
SHERIFF, CAMBRIA COUNTY, PA	GENERAL NOT FOUND	5.00
	GENERAL MILEAGE	7.30
KANE, JOSEPH D/B/A CONSERVCO	PROTHONOTARY NOTARY	3.00
90087-02	REFUND ON DOCKET	75.70
COMPLAINT - KANE VS. KONDISKO		
KANE, JOSEPH D/B/A CONSERVCO		
V S		
KONDISKO, JOSEPH & 02-334		
WILLIAM SHAW JR.		
211 N. 2ND STREET		
CLEARFIELD, PA 16830		
	TOTAL COSTS.....	100.00
	TOTAL RECEIPTS.....	100.00

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(Civil Division)

JOSEPH F. KANE, d/b/a/ Conservco

v.

JOSEPH R. KONDISKO and ALLANA M.
KONDISKO, K-MANAGEMENT GROUP, INC.,
d/b/a/ Burger King

No. 02-334-CO

Type of Pleading:

COMPLAINT

Filed on Behalf of:

PLAINTIFF

Counsel for Plaintiff:

William A. Shaw, Jr., Esquire
I.D. # 78007


Attorney at Law
211 N. Second Street
Clearfield, PA 16830
(814) 765-1910

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

JURY TRIAL DEMANDED

MAR 05 2002

Attest.


Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(Civil Division)

JOSEPH F. KANE, d/b/a/ Conservco	:	
	:	
v.	:	No.
	:	
JOSEPH R. KONDISKO and ALLANA M.	:	
KONDISKO, K-MANAGEMENT GROUP, INC.,	:	
d/b/a/ Burger King	:	
	:	

NOTICE TO DEFEND AND CLAIM RIGHTS

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 (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 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, Pennsylvania 16830
(814) 623-4812

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(Civil Division)

JOSEPH F. KANE, d/b/a/ Conservco	:	
	:	
v.	:	No.
	:	
JOSEPH R. KONDISKO and ALLANA M.	:	
KONDISKO, K-MANAGEMENT GROUP, INC.,	:	
d/b/a/ Burger King	:	
	:	

COMPLAINT

NOW, comes the Plaintiff, Joseph F. Kane, by and through his attorney, William A. Shaw, Jr., Esquire, and files the following Complaint.

1. The Plaintiff, Joseph F. Kane (Kane), is an adult individual residing at PO Box 1404, Clearfield, Pennsylvania, 16830.
2. Kane is the owner and operator of Conservco, a construction company with a business address of PO Box 1404, Clearfield, PA 16830.
3. Defendants, Joseph R. Kondisko and Allana M. Kondisko (Kondisko) are the owners of K-Management Group, Inc., with a business address of PO Box 248, Portage, Pennsylvania, 15946.
4. Kondisko owns and operates a Burger King franchised restaurant (hereinafter Burger King), with a regular place of business near the intersection of Interstate 80 and State Route 879 in Lawrence Township, Clearfield County, Pennsylvania, 16830.

5. Kondisko required modifications to the Burger King and solicited Kane to perform the needed modifications.
6. By letter dated February 4, 2002, Kane provided Kondisko with a job estimate wherein Kane would furnish all labor, materials, tools, and equipment necessary to provide the requested modifications to Burger King. (Attachment 2).
7. By letter dated February 22, 2000, Kane provided an updated job estimate for the requested modifications to Burger King. (Attachment 3).
8. On or about March 22, 2002, the Defendant, Joseph R. Kondisko, agent for Allana M. Kondisko, K-Management, Inc., and Burger King, entered into a written Contract (Contract) with Kane, wherein Kane would perform requested remodeling at Burger King and Kondisko would compensate Kane in the amount of One Hundred Thirty Five Thousand Four Hundred Forty Two Dollars (\$135,442.00), an amount to be reduced by Two Thousand Twenty Dollars (\$2,020.00) due to the elimination of certain job responsibilities to be performed by Kane. (Attachment 1).
9. Kane performed the modifications to Burger King pursuant to the Contract.
10. Kane sent Kondisko the first invoice for payment in the amount of Sixty Six Thousand Seven Hundred Eleven (\$66,711.00). (Attachment 4).
11. On or about September 20, 2000, Kane sent Kondisko a final invoice in the amount of Sixty One Thousand Sixty One Dollars (\$61,061.00). (Attachment 5).
12. By letter dated November 6, 2000, a Kondisko representative notified Kane that Kondisko was refusing to pay the agreed upon Contract Price. (Attachment 6).

13. By letter dated November 20, 2000, Kane acknowledged receipt of partial payments by Kondisko in the amounts of Sixty Six Thousand Seven Hundred Eleven Dollars (\$66,711.00) and Thirty Four Thousand Three Hundred Eight Dollars (\$34,308.00) and demanded Kondisko make final payment in the amount of Twenty Four Thousand One Hundred Fifty Three Dollars (\$24,153.00) (Attachment 7).

14. By letter dated July 26, 2001, Kane again contacted Kondisko and again demanded final payment of the total amount due. (Attachment 8) .

COUNT I BREACH OF CONTRACT

15. Paragraphs 1 - 14 are incorporated herein by reference.

16. Kane entered into a written Contract with Kondisko for construction and remodeling work at Burger King.

17. Kane has performed pursuant to the Contract.

18. Kane has demanded payment pursuant to the Contract terms.

19. Kondisko has refused and continues to refuse to pay Kane the amounts owed, without justification.

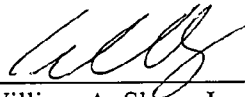
20. Kondisko willfully and intentionally breached the Contract entered into with Kane, and Kane has lost profits, income, and incurred incidental costs as a result of Kondisko's breach.

WHEREFORE, The Plaintiff, Joseph F. Kane, demands judgment entered against

Defendant's:

- a. Payment of the Contract Price Due \$24,153.00, an amount in excess of any jurisdictional amount requiring compulsory arbitration .
- b. Incidental Damages.
- c. Interest Fee.
- d. All other relief allowed by law.

Respectfully Submitted,

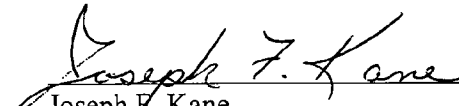


William A. Shaw, Jr.
Attorney for Plaintiff

VERIFICATION

I, Joseph F. Kane, verify that the statements made herein are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Date: 02 / 28 / 02



Joseph F. Kane

2

THE AMERICAN INSTITUTE OF ARCHITECTS AIA Document A 101

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a

STIPULATED SUM 1987 EDITION

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION, The 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified. This document has been approved and endorsed by The Associated General Contractors of America.

AGREEMENT

made as of the 22 day of MARCH in the year of 2000

BETWEEN the owner: (Name and address) JOSEPH KONDISKO, PO BOX 248, PORTAGE, PA. 15946

and the Contractor: (Name and address) BJR, INC. DBA CONSERVCO, P.O. BOX 1404; CLEARFIELD, PA.,

The Project is: (Name and location) RESTUARANT ADDTION, BURGER KING, RT 879, CLEARFIELD, PA.

The Architect is: (Name and address) HUGHES ENG. & BURGER KING STANDARD DRAWINGS

The Owner and Contractor agree as set forth below.

Copyright 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, © 1987 by The American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006. Reproduction of the material herein or substantial quotation of its provisions without written permission of the AIA violates the copyright laws of the United States and will be subject to legal prosecution.

AIA DOCUMENT A101 & OWNER-CONTRACTOR AGREEMENT * TWELFTH EDITION - AIAO 1987

1

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents 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 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

1. ALL EXCLUSIONS OUTLINED IN CONSERVCO QUOTE (EXHIBIT *A) DATED 02-04-00
2. *****

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, and shall be the date of this Agreement, as first written above, 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.)

APRIL 10, 2000

Unless the date of commencement is established by a notice to proceed issued by the owner, the Contractor shall notify the Owner in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than MAY 30,, 2000

(insert The calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)

ARTICLE 4 CONTRACT SUM

4.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of Dollars

(\$ \$ 135,442.00

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:

(

ORIGINAL CONTRACT PRICE	\$ 148,841.00
REDUCE SCOPE OF WORK IN DRIVE THRU AREA AS PER OUR LETTER DATED 02-22-00	(\$ 16,000.00)
ADD REDOING THE FOFFIT ON THE EXISTING MANSARD ROOF	\$ 2,600.00

CURRENT CONTRACT PRICE	\$ 135,442.00
------------------------	---------------

ABOVE PRICING DOES NOT INCLUDE COST OF REWORKING THE DUMPSTER AREA. THE METHOD OF CONSTRUCTION AND PRICE OF SAME BE BE DETERMINED.

ABOVE PRICE IS TO BE REDUCED BY \$2020.00  DUE TO THE ELIMINATION OF THE LIGHT BAND CONSTRUCTION UNDER OUR CONTRACT AND FLAGPOLE RESPONSIBILITIES

ARTICLE 5 PROGRESS PAYMENTS 5.1 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.

5.2 The period covered by each Application for Payment shall be one calendar month ending on the 25TH day of the month, or as follows:

5.3 Provided an Application for Payment is received by the Architect not later than the LAST DAY OF THE PRIOR MONTH day of a month, the Owner shall make payment to the Contractor not later than the 15TH day of the 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 30 days after the Architect receives the Application for Payment.

5.4 Each Application for Payment shall be based upon the 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 and 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 Applications for Payment.

5.5 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.

5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows: **5.6.1.** completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of 0 (ZERO) percent (%). Pending final determination of cost to the Owner of changes in the Work, amounts not in the dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions even though the Contract Sum has not yet been adjusted by Change Order;

5.6.2 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 percent(ZERO %);

5.6.3 Subtract the aggregate of previous payments made by the Owner; and

5.6.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

5.7 The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances:

5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to percent(100 %) of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work and unsettled claims; and

5.7.2 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 the General Conditions. **5.8** Reduction or limitation of retainage, if any, shall be as follows:

ARTICLE 6 FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final

Certificate for Payment, or as follows:

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Where reference is made in this Agreement to a provision of the General Conditions 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 at The Owner's and Contractor's principal places of business. The location of the Project and elsewhere may effect 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 Other provisions:

ARTICLE 8

TERMINATION OR SUSPENSION

8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

8.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

AIOI-1987 5

1

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows: 9.1.1

The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document A101, 1987 Edition.

9.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201, 1987 Edition. 9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated and are as follows:

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

9.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 9.1-3, and are as follows:

(P, 'ither list The Specifications here or refer to an exhibit attached to this Agreement.)

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

GENERAL OUTLINE SPECIFICATIONS AS SHOWN ON DRAWINGS PREPARED BY
HUGHES ENG.

9.1.5 The Drawings are as follows, and are dated
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

unless a different date is shown below:

Number	Title	Date
HUGHES ENGINEERING DRAWINGS A-1 AND A-2 DATED 03-30-00		

6 The addenda, if any, are as follows:

Number	Date	Pages
--------	------	-------

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

(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertise?ment 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.)

CONSERVCO BID LETTER DATED FEBRUARY 04, 2000 CONSISTING OF FIVE PAGES AND INCLUDED THEREIN AS EXHIBIT (A)

CONSERVCO REVISION LETTER DATED FEBRUARY 22, 2000 CONSISTING OF TWO PAGES AND INCLUDED HERIN AS EXHIBIT (B)

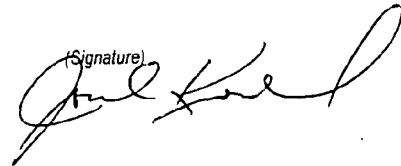
This Agreement is entered into as of the day and year first written above and is executed in at least three original copies of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER

Joseph K. O'Driscoll

CONTRACTOR (Signature)

(Signature)


JOSEPH F. KANE, PRES.

(Printed name and title)

J. F. KANE, PRES.
(Printed name and title)

CAUTION: YOU Should sign an original AIA document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

AIA DOCUMENT A101 0 OWNER-CONTRACTOR AGREEMENT o TWELFTH EDITION * AIA* 1987
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006

A101-1987 8

WARNING: Uncensored photocopying violates U.S. copyright laws and is subject to legal prosecution.

1

February 4, 2000

K Management
PO Box 248
Portage, PA.
15946

Re: Clearfield Burger King

Gentlemen;

We propose to furnish all labor, materials, tools, and equipment necessary to accomplish the following scope of work:

SALVAGE

1. Remove for salvage all components of the existing solarium. Deliver and cover same to the Glen Richey address

DEMOLITION

1. Remove all concrete curbing starting at the refuse area and proceeding around the drive in to the front entrance
2. Remove all asphalt curbing
3. Remove concrete pad at the drive-in order area
4. Remove concrete pad at the drive in food area
5. Remove exterior concrete pad at the entrance
6. Remove concrete walks as needed
7. Remove concrete apron area at the existing solarium
8. Remove all areas of the reworked mansard
9. Remove finishes on the wall common with the dining room and solarium
10. Remove existing plastic roof trim.
11. Remove concrete blocks at the dumpster area
12. Remove the flag pole ?

EXTERIOR CONSTRUCTION

1. Install approximately 850 lineal feet of new concrete curbing being 18 inches deep tapered to six inches at the top with six inches of exposure. Curbing to be of high early concrete and to receive a rubbed finish
2. Install new concrete pads at the order placement station and the order pick up station. Pads to be sized as existing, reinforced with a double mat of # 5 rebar running 12 inch on center both ways. Pads to be 8 inches thick of 5,500 psi high early concrete. Pads to have a light broom finish and to have two seal coats. Sensor wiring furnished by other is to be installed by Conservco
3. Complete backfill of excess curb excavated area with 2-B gravel
4. Installation of plus or minus four inches of BCBC in the inside curb area
5. Complete overlay of the drive-thru area with 1 1/2 " of ID-2
6. Existing blacktop to be milled to accommodate overlay
7. Rough backfill of the outside curb area

EXTERIOR BUILDING CONSTRUCTION

1. Remove all shingles on the existing mansard (optional)
2. Remove existing entrance doors
3. Install new entrance complete (See allowances)
4. Reshingle mansard roof
5. Pour new concrete sidewalks and approaches as required by the final layout

INTERIOR PLAYGROUND

1. Construct playground in accordance with Burger King drawings numbered A-12A; A-12B, A-12C, A-12C.
2. The above drawings are general in nature, we have made adjustments to accommodate local and existing conditions.

3. It is possible that portions of the foundation of the existing structure can be utilized. In our pricing we have figured on all new footer and foundation. If the existing can be incorporated into the design a credit will be offered.
4. In designing and pricing of the playground it has been assumed that there is sufficient electrical panel space to accommodate the additional loading of the playground.
5. The design of the playground includes a completely independent HVAC system. It is assumed that there is sufficient gas capacity and pipe size to accommodate the additional load. It is noted that the HVAC unit does not call for an economizer.
6. It is noted that the playground unit as built in Johnstown appears to have a higher elevation than those shown on the bid documents. We have used the bid document in our estimate
7. The bid documents indicate a exit door coming out of the playground. We have not included this item

INCLUSIONS

1. Local permits
2. Labor & Industry approval
3. Local engineer stamped drawings
4. Local footer design
5. Daily cleanup and removal of debris
6. Off site disposal of concrete, asphalt, and excess excavated materials.

EXCLUSIONS

1. Sprinkler system
2. Landscaping
3. Furnishing or installing playground equipment
4. Furnishing or installing seating fixtures
5. Furnishing or installing the cupola
6. Existing roof repairs

MISCELLANEOUS

1. We have included moneys to replace the plastic band at the top of existing roof. It is assumed that you will furnish the materials
2. We have included erecting a temporary security/safety fence around the playpen construction sight
3. Any open areas for curbing etal will be double barricaded during off construction periods with flashing warning lights
4. Given that the existing brick is painted we have included painting of the new brick construction
5. To lessen the traffic into the operating restaurant we have included moneys for a portable sanitary facility
6. We have assumed that you will supply all required construction electrical and water requirements.
7. We note that the bid documents indicate that the playpen HVAC unit is located on the restaurant area. Since we do not know the collateral load capacities of the existing we have located the unit on the new roof.
8. The final dimensions of the Playpen area may have to be adjusted to accommodate the existing layout. This should no have a pricing impact.
9. The HVAC as designed is very expensive. We have priced the project using the exact system called for in the documents. A nice savings could be recognized if we redesigned the system.
10. We have included moneys for constructing and maintaining a temporary walkway into the store during that brief period when the entrance id under construction.
11. The prototype drawings indicate roof drains going into existing roof drain. We do not know if the existing building has drains or if they are sized to accommodate additional loading. We have reworked the drains to go to daylight.
12. The documents did not indicate any wall receptacles. We have included six in our pricing all to be GFI protected
13. We have included installation of the vinyl wallpaper and application of the stencil work.
14. Although we have excluded furniture and fixture setup we have completed this item on many retail stores and would be pleased to give you pricing

PRICING

1. Our total price for the above captioned project including all insurance and taxes amount to \$ 148,841.00.
2. Included in the above pricing is an allowance of \$ 10,000.00 for all materials

- and labor involved in the construction of the undersigned entrance area
This allowance would include two double entrances and all construction elements required to provide a "turnkey" project. If you elect to proceed with our Company we would have the design work completed prior to construction so that the true cost could be determined before any work is unneaten.
3. Included in the above pricing is a material allowance of \$ 3.00 per square foot or the purchase of flooring materials
 4. Included in our pricing is a material and labor cost of \$ 2,500.00 to reshingle the balance of the mansard roof
 5. If you elect to eliminate all work related to refurbishing the Drive-thru area you may deduct \$ 24,000.00
 6. If the existing solarium can be discarded in lieu of salvaged deduct \$ 4,000.00

We estimate the project will take six to eight weeks to accomplish. It must be recognized that the paving elements of the project are weather sensitive. We are in a position to start the drive thru work immediately and will follow up with the playpen upon completion of the local design work and issuance of a building permit. In order to minimize interruption of your business during your peak hours we will start the project at first light (5:30 to 6:00 A.M.) and minimize noise levels as directed by your management. Our staff will park off site and we will keep materials inventory to the bare minimum. Thank you for affording us the opportunity of submitting pricing on this project. We are currently working on projects in the Clearfield Fireman's Industrial Park and the K-Mart Plaza. This should aid us in transporting crews and materials to your site.

Sincerely Yours,

Joseph F. Kane

CONSERVCO

GENERAL CONTRACTORS

MAILING ADDRESS
805 SOUTH SECOND STREET
CLEARFIELD, PA. 16830

OFFICE ADDRESS
ONE WASHINGTON AVENUE
HYDE, PA. 16843

#2
J. F. KANE
R. HELSEL
(814) 765-6725
FAX: (814) 765-2380

February 22, 2000

K Management
PO Box 248
Portage, PA.
15946

via fax 941-488-8235

Re: Clearfield Burger King

Dear Joe;

Good Morning, Its headed for 50 degrees this week, maybe, just maybe Spring is on its way. Reference our on site meeting of Saturday the 19th we offer the following revisions:

- Item One: In lieu of the drive thru repairs indicated on the first proposal substitute the following:
- A. Remove all asphalt curbing.
 - B. Remove concrete curbing starting at the food pick up area and proceeding on the inside radius of the drive way to the end of the driveway.
 - C. Repair excavated areas with select backfill and BCBC to grade.
 - D. Overlay the entire area with 1 & 1/2 inch of ID-2 milled into the existing.

DEDUCT FROM THE BASE PRICE \$ 16,000.00

- ITEM TWO Effect repairs to the mansard roof as follows:
- A. Remove approximately 220 lineal feet of existing vinyl soffit and fascia materials to run around the perimeter of the building including the canopy at the take out pick up area.
 - B. Install new vinyl soffit materials including "J" trim on all area.
 - C. Install new vinyl or plastic covered fascia board.
 - D. Include an allowance of \$ 300.00 for material purchase of Fascia board.

ADD TO THE BASE PRICE: \$ 2,600.00

3

CONSERVCO

GENERAL CONTRACTORS

MAILING ADDRESS
805 SOUTH SECOND STREET
CLEARFIELD, PA. 16830

OFFICE ADDRESS
ONE WASHINGTON AVENUE
HYDE, PA. 16843

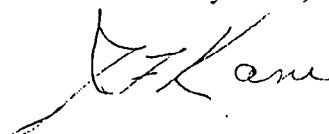
J. F. KANE
R. HELSEL
(814) 765-6725
FAX: (814) 765-2380

PRICING

1. Our total price for the above captioned project including all insurance and taxes amount to \$ 148,841.00.
2. Included in the above pricing is an allowance of \$ 10,000.00 for all materials and labor involved in the construction of the undersigned entrance area. This allowance would include two double entrances and all construction elements required to provide a "turnkey" project. If you elect to proceed with our Company we would have the design work completed prior to construction so that the true cost could be determined before any work is uneaten.
3. Included in the above pricing is a material allowance of \$ 3.00 per square foot or the purchase of flooring materials
4. Included in our pricing is a material and labor cost of \$ 2,500.00 to reshingle the balance of the mansard roof
5. If you elect to eliminate all work related to refurbishing the Drive-thru area you may deduct \$ 24,000.00
6. If the existing solarium can be discarded in lieu of salvaged deduct \$ 4,000.00

We estimate the project will take six to eight weeks to accomplish. It must be recognized that the paving elements of the project are weather sensitive. We are in a position to start the drive thru work immediately and will follow up with the playpen upon completion of the local design work and issuance of a building permit. In order to minimize interruption of your business during your peak hours we will start the project at first light (5:30 to 6:00 A.M.) and minimize noise levels as directed by your management. Our staff will park off site and we will keep materials inventory to the bare minimum. Thank you for affording us the opportunity of submitting pricing on this project. We are currently working on projects in the Clearfield Fireman's Industrial Park and the K-Mart Plaza. This should aid us in transporting crews and materials to your site.

Sincerely Yours,



CONSERVCO

GENERAL CONTRACTORS

MAILING ADDRESS
P.O. Box 1404
CLEARFIELD, PA. 16830

OFFICE ADDRESS
ONE WASHINGTON AVENUE
HYDE, PA. 16843

J. F. KANE
(814) 765-6725
FAX: (814) 765-2380
E-MAIL:
conservco@clearnet.net

ITEM THREE Reconstruct the existing trash impound. The existing is a concrete block shelter with a brick veneer added that has been stuccod. The original attack was to dig down on the outside of the existing walls and pour a small concrete footer to create a brick ledge. Closer investigation of the existing revealed numerous cracks and impact damage. Economically we would be better served to removed all remnants of the above grade block and build a new unit using the following outline:

- A. Remove existing to grade.
- B. Increase the size at the entrance to square off the structure.
- C. Install new masonry units with a brick veneer on the exposed walls.
- D. Install a treated lumber top plate on the structure.
- E. Paint all exposed brick work.
- F. Install a bronze aluminum coping on top of all walls. This is recommended in lieu of a brick rowlock in order to better seal the top. from water infiltration.

ADD TO THE BASE PRICE: \$ 6,400.00

The cost of item three is influenced by the proximity of the electrical and the fact that it requires approximately 3,000 brick plus block to accomplish. We could construct a heavy limber unit was less money.

If these numbers are in line with your expectations we will get Labor & Industry started. I expect to be in Brookville tomorrow (Wednesday). Would you want me to stop and see the rest rooms ?

Joseph Kane

4

K Management
PO Box 248
918 Main Street
Portage, PA
15946

Re: Clearfield Burger King
Route 879

INVOICE

PROJECT BILLING AT FLOOR
INSTALLATION AS PER
VERBAL CONVERSATION
CONTRACT AMOUNT
PRIOR BILLINGS

\$ 133,422.00
0.00

50 % BILLING

\$ 66,711.00

4

5

September 20, 2000

Ms. Maureen Gathagan
Gathagan Enterprises
29 South Second Street
Clearfield, PA.
16830

Re: Burger King @ 879Fashion Bug

Dear Maureen;

Enclosed herein please find the final invoice for the aforementioned project. If it is K Management's responsibility please forward to them.

I don't know how to bill this we did many things that were not in the original bid while you or Joe's people did many things that we where to do.

Sincerely Yours

Joseph F. Kane

5

CONSERVCO

GENERAL CONTRACTORS

MAILING ADDRESS
P.O. Box 1404
CLEARFIELD, PA. 16830

OFFICE ADDRESS
ONE WASHINGTON AVENUE
HYDE, PA. 16843

J. F. KANE
(814) 765-6725
FAX: (814) 765-2380
E-MAIL:
conservco@clearnet.net

September 20, 2000

Ms. Maureen Gathagan
Gathagan Enterprises
29 South Second Street
Clearfield, PA.
16830

Re: Burger King @ 879

INVOICE

CONTRACT AMOUNT	\$ 133,422.00
DELETE BALANCE OF DRIVE WAY WORK	(\$ 8,000.00)
DELETE PURCHASE OF FURNACE	(\$ 5,500.00) —
ADD DUMPSTER	\$ 4,500.00 —
ADD RESHINGLING OF MANSARD	\$ 2,600.00
ADD REAR DOOR	\$ 750.00 —
CONTRACT AMOUNT	\$ 127,772.00
PAID TO DATE	(\$ 66,711.00)
AMOUNT OF THIS INVOICE	\$ 61,061.00

5

#6

MEMORANDUM

DATE: 11/6/00
TO: JOE KANE
FROM: DAVID DEININGER *DS*
RE: BURGER KING, CLEARFIELD

1)
C "

Following is the reconciliation of the final amount due Conservco for work on the Burger King in Clearfield.

Contract Amount	133,422	
Add: Dumpster	4,500	
Add: Rear Door	750	
Delete: Driveway/Drive-Thru (per item #5 under Pricing)	(24,000)	
Delete: Furnace	(5,500)	
Delete: Cost of bricks (copy of Kohlhepp invoice attached)	(822)	
Delete: Items completed by Tom Myers (copy attached)	(3,000)	Inv #305534
Delete: Items completed by Tom Myers (copy attached)	(4,331)	Inv #305542
Sub-Total	101,019	
Less: Amounts previously paid	(66,711)	
FINAL AMOUNT DUE	34,308	

The scope and supplies included on the Kohlhepp & Tom Myers invoices are included in the original contract/quote, thus the reason for the deduction. The driveway work was deducted at \$24,000 per the language of item #5 under Pricing in the contract.

DSD

11/6/00

Confidential

6

7

November 20, 2000

Ms. Maureen Gathagan
Gathagan Enterprises
29 South Second Street
Clearfield, PA.
16830

Re: Burger King @ 879

Dear Maureen

I must assume that your recent partial payment was nothing more than a miss understanding of the contract. I wish your Mr. Deininger would have paid us the courtesy of calling prior to sending this partial payment. Following is recap:

- 1 Original contract amount as per our signed contract was \$ 148,841.00 dated 02-04-00. (enc. "A")
- 2 On 02-05-00 via our letter (copy enclosed mark "B") the scope of the driveway work was reduced by \$ 16,000.00 leaving a balance of \$ 8,000.00. At the same time it was decided to add soffit and fascia materials around the existing building at an additional cost of \$ 2,600.00
- 3 During an on site meeting with Mr. K it was decided to eliminate the flag pole, the receptacles, and red plastic band from the play room addition. This resulted in a credit of \$ 2,019.00.
- 4 At the beginning of the project the contract sum stood as follows:

Contract amount	\$ 148,841.00
Delete partial driveway work	(\$16,000.00)
Add soffit work	\$ 2,600.00
Delete banding etal	(\$ 2,019.00)

Contract amount:	\$ 133,422.00
------------------	---------------

5. As the project progressed the rear door was added along with the dumpster. These two items resulted in additional costs of \$ 5,250.00. The driveway work was none under a separate contract resulting in the reduction of your contract by the remaining balance of \$ 8,000.00. In addition the furnace was part of our contract. You furnished the unit and we credited it out at \$ 5,500.00. At this point the contract stood at the following

Revised contract amount	\$ 133,422.00
Add T & M dumpster	4,500.00
Add rear door	750.00
Delete balance of driveway	(8,000.00)
Delete furnace	(5,500.00)

Revised Contract amount:	\$125,172.00
--------------------------	--------------

6. Against this contract amount you made a payment of \$ 66,711.00 and \$ 34,308.00 leaving a balance due of \$ **24,153.00**
7. On 11-06-00 we received an overview from a David Deininger that was incomplete at best. The enclosed copy (enclosure " C") contained the following errors
- Mr. Deininger used the wrong contract amount. He was able to determine the line five credit of \$ 24,000.00 but couldn't see the line above indicating the contract amount of \$ 148,842.00
 - The dumpster pricing in the contract was \$ 6,400.00. We reduced the amount to \$ 4,500.00 because you furnished the brick and added the top camp.
 - The rear door amount is correct
 - The driveway credit of \$ 24,000.00 is incorrect. \$ 16,000.00 of this amount was already taken out of the contract
 - The brick charge of \$ 822.00 is incorrect. The cost of the brick was recognized in our reducing the dumpster price by \$ 1,900.00
 - The Myers invoice # 3055434 was deduced from our contract in the amount of \$ 3,000.00 with out any itemization. Mr. Myers invoice indicated an attached list. We where not sent

same. The Myers invoice # 305542 was deducted from our invoice in the amount of \$ 4,331.00. This invoice included a rough outline of the work included. A review of same reveals that with the exception of the painting of the addition none of the work was under our contract.

I believe items "a" thru "e" represent a misunderstanding of the contract. Item "f" is completely wrong. In our cover letter (enc. "D")that included our invoice we indicated that we completed many items that where not in our contract while your forces completed items that where in our contract.

Apparently Mr. Deininger chose to ignore our extras. Consider the following;

- a. The square footage of the addition was increased at no additional charge.
- b. The exterior lights where rewired at not additional charge
- c. The main panel was reworked at no additional charge.
- d. The rear exposed wiring to the sign was reworked at no additional charge.
- e. The contract included an allowance of \$ 300.00 for fascia trim. The actual cost of same was \$ 1,700.00. You were not charged the additional \$ 1,400.00
- f. The contract included an allowance f \$ 10,000.00 for the vestibule. The final cost was \$ 11,250.00. You where not charged the additional amount.
- g. We designed the project heating around a low profile unit and installed the roof curb accordingly. The unit we received was completely different requiring reworking the curb size and redoing the roof. The added cost of \$ 760.00 for labor and \$ 1,100.00 for reworking the roofing was not charges to you.

If Mr. Deininger has any additional questions on this matter please have him contact me. Otherwise I assume we will receive the balance due by December 15, 2000.

Sincerely Yours;

7

8

July 26, 2001

Mr. Joe Kondisko
P.O. Box 248
Portage, PA.
15946

Re: Clearfield Burger King

Dear Mr. Kondisko

I apologize for being so long in revisiting the above project. At our age time seems to fly by.

We have analyzed the invoices Mr. Deninger sent to us and remain at a complete loss as to why our final payment of \$ 24,143.00 remains unpaid

Before this becomes a legal matter please consider the following:

1. We bear no responsibility for the HVAC. You are presenting the argument that nearly \$25,000.00 was spent to relocate a unit 20 plus feet. That's ridiculous, there's not a court in the world that would believe it took **340 man-hours** (enclosure # 1) to relocate this unit. Our contract specifically states that the unit was to be placed on the new roof. We spend \$ 2,200.00 to rework the curb because the wrong unit was sent. You where not charged for this.
2. There is no question that your people did some of the work under our contract. Likewise there is no question that we did additional work that wasn't under our contract. You are back charging us 90% of Tom's invoice # 305534. The only item on there that was ours was painting the addition. On invoice # 305542 you are again charging us 90% when almost none of the items are ours.
3. On the dumpster you are back haring us for the brick. That portion of the project was T & M. How can you charge us for something that you weren't charged for?

4. On the paving issue you are deducting \$ 24,000.00 from our invoice when we only had a balance of \$ 8,000.00 for the item. \$ 16,000.00 was already removed in the prior negotiations. You enclosed an invoice from Porter which simply states " To Do " list ", \$ 24,793.18. How much was in our contract? How much were items you added. With no detail it's a blind guess.

I sincerely hope that we can avoid the lawyers in this matter. Lawyer's fees, interest charges, Procurement laws, we both will lose, but as it stand now, I am the only loser. Please reconsider your position on the balance of \$ 24,153.00.

Sincerely Yours,

Joseph F. Kane

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(Civil Division)

JOSEPH F. KANE, d/b/a/ Conservco

v.

JOSEPH R. KONDISKO and ALLANA M.
KONDISKO, K-MANAGEMENT GROUP, INC.,
d/b/a/ Burger King

No. 02-334-CD

Type of Pleading:

COMPLAINT

FILED

MAR 05 2002

013021 atty Shaw
William A. Shaw
Prothonotary
pd \$8000
4cc atty

Filed on Behalf of:

PLAINTIFF

Counsel for Plaintiff:

William A. Shaw, Jr., Esquire
I.D. # 78007

Attorney at Law
211 N. Second Street
Clearfield, PA 16830
(814) 765-1910

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(Civil Division)

JOSEPH F. KANE, d/b/a/ Conservco	:	
	:	
v.	:	No.
	:	
JOSEPH R. KONDISKO and ALLANA M.	:	
KONDISKO, K-MANAGEMENT GROUP, INC.,	:	
d/b/a/ Burger King	:	
	:	

NOTICE TO DEFEND AND CLAIM RIGHTS

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 (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 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, Pennsylvania 16830
(814) 623-4812

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(Civil Division)

JOSEPH F. KANE, d/b/a/ Conservco	:	
	:	
v.	:	No.
	:	
JOSEPH R. KONDISKO and ALLANA M.	:	
KONDISKO, K-MANAGEMENT GROUP, INC.,	:	
d/b/a/ Burger King	:	
	:	

COMPLAINT

NOW, comes the Plaintiff, Joseph F. Kane, by and through his attorney, William A. Shaw, Jr., Esquire, and files the following Complaint.

1. The Plaintiff, Joseph F. Kane (Kane), is an adult individual residing at PO Box 1404, Clearfield, Pennsylvania, 16830.
2. Kane is the owner and operator of Conservco, a construction company with a business address of PO Box 1404, Clearfield, PA 16830.
3. Defendants, Joseph R. Kondisko and Allana M. Kondisko (Kondisko) are the owners of K-Management Group, Inc., with a business address of PO Box 248, Portage, Pennsylvania, 15946.
4. Kondisko owns and operates a Burger King franchised restaurant (hereinafter Burger King), with a regular place of business near the intersection of Interstate 80 and State Route 879 in Lawrence Township, Clearfield County, Pennsylvania, 16830.

5. Kondisko required modifications to the Burger King and solicited Kane to perform the needed modifications.

6. By letter dated February 4, 2002, Kane provided Kondisko with a job estimate wherein Kane would furnish all labor, materials, tools, and equipment necessary to provide the requested modifications to Burger King. (Attachment 2).

7. By letter dated February 22, 2000, Kane provided an updated job estimate for the requested modifications to Burger King. (Attachment 3).

8. On or about March 22, 2002, the Defendant, Joseph R. Kondisko, agent for Allana M. Kondisko, K-Management, Inc., and Burger King, entered into a written Contract (Contract) with Kane, wherein Kane would perform requested remodeling at Burger King and Kondisko would compensate Kane in the amount of One Hundred Thirty Five Thousand Four Hundred Forty Two Dollars (\$135,442.00), an amount to be reduced by Two Thousand Twenty Dollars (\$2,020.00) due to the elimination of certain job responsibilities to be performed by Kane. (Attachment 1).

9. Kane performed the modifications to Burger King pursuant to the Contract.

10. Kane sent Kondisko the first invoice for payment in the amount of Sixty Six Thousand Seven Hundred Eleven (\$66,711.00). (Attachment 4).

11. On or about September 20, 2000, Kane sent Kondisko a final invoice in the amount of Sixty One Thousand Sixty One Dollars (\$61,061.00). (Attachment 5).

12. By letter dated November 6, 2000, a Kondisko representative notified Kane that Kondisko was refusing to pay the agreed upon Contract Price. (Attachment 6).

13. By letter dated November 20, 2000, Kane acknowledged receipt of partial payments by Kondisko in the amounts of Sixty Six Thousand Seven Hundred Eleven Dollars (\$66,711.00) and Thirty Four Thousand Three Hundred Eight Dollars (\$34,308.00) and demanded Kondisko make final payment in the amount of Twenty Four Thousand One Hundred Fifty Three Dollars (\$24,153.00) (Attachment 7).

14. By letter dated July 26, 2001, Kane again contacted Kondisko and again demanded final payment of the total amount due. (Attachment 8) .

**COUNT I
BREACH OF CONTRACT**

15. Paragraphs 1 - 14 are incorporated herein by reference.

16. Kane entered into a written Contract with Kondisko for construction and remodeling work at Burger King.

17. Kane has performed pursuant to the Contract.

18. Kane has demanded payment pursuant to the Contract terms.

19. Kondisko has refused and continues to refuse to pay Kane the amounts owed, without justification.

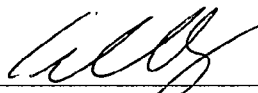
20. Kondisko willfully and intentionally breached the Contract entered into with Kane, and Kane has lost profits, income, and incurred incidental costs as a result of Kondisko's breach.

WHEREFORE, The Plaintiff, Joseph F. Kane, demands judgment entered against

Defendant's:

- a. Payment of the Contract Price Due \$24,153.00, an amount in excess of any jurisdictional amount requiring compulsory arbitration .
- b. Incidental Damages.
- c. Interest Fee.
- d. All other relief allowed by law.

Respectfully Submitted,

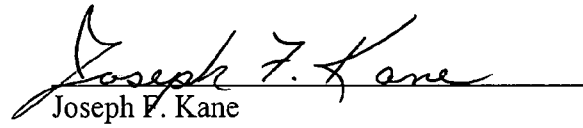


William A. Shaw, Jr.
Attorney for Plaintiff

VERIFICATION

I, Joseph F. Kane, verify that the statements made herein are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Date: 02 / 28 / 02


Joseph F. Kane

2

THE AMERICAN INSTITUTE OF ARCHITECTS AIA Document A 101

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a

STIPULATED SUM 1987 EDITION

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION, The 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified. This document has been approved and endorsed by The Associated General Contractors of America.

AGREEMENT

made as of the 22 day of MARCH in the year of 2000

BETWEEN the owner: (Name and address) JOSEPH KONDISKO, PO BOX 248, PORTAGE, PA. 15946

and the Contractor: (Name and address) BJR, INC. DBA CONSERVCO; P.O. BOX 1404; CLEARFIELD, PA.,

The Project is: (Name and location) RESTUARANT ADDTION, BURGER KING, RT 879, CLEARFIELD, PA.

The Architect is: (Name and address) HUGHES ENG. & BURGER KING STANDARD DRAWINGS

The Owner and Contractor agree as set forth below.

Copyright 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, @ 1987 by The American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006. Reproduction of the material herein or substantial quotation of its provisions without written permission of the AIA violates the copyright laws of the United States and will be subject to legal prosecution.

AIA DOCUMENT A101 & OWNER-CONTRACTOR AGREEMENT * TWELFTH EDITION - AIAO 1987

1

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents 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 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

1. ALL EXCLUSIONS OUTLINED IN CONSERVCO QUOTE (EXHIBIT "A ") DATED 02-04-00
2. *****

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, and shall be the date of this Agreement, as first written above, 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.)

APRIL 10, 2000

Unless the date of commencement is established by a notice to proceed issued by the owner, the Contractor shall notify the Owner in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than MAY 30,, 2000

(insert The calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)

ARTICLE 4 CONTRACT SUM

4.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of Dollars

(\$ 135,442.00

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:

(

ORIGINAL CONTRACT PRICE	\$ 148,841.00
REDUCE SCOPE OF WORK IN DRIVE THRU AREA AS PER OUR LETTER DATED 02-22-00	(\$ 16,000.00)
ADD REDOING THE FOFFIT ON THE EXISTING MANSARD ROOF	\$ 2,600.00

CURRENT CONTRACT PRICE	\$ 135,442.00
------------------------	---------------

ABOVE PRICING DOES NOT INCLUDE COST OF REWORKING THE DUMPSTER AREA. THE METHOD OF CONSTRUCTION AND PRICE OF SAME BE BE DETERMINED.

ABOVE PRICE IS TO BE REDUCED BY ~~\$2020.00~~ ^{1200.00} DUE TO THE ELIMINATION OF THE LIGHT BAND CONSTRUCTION UNDER OUR CONTRACT AND FLAGPOLE RESPONSIBILITIES

ARTICLE 5 PROGRESS PAYMENTS 5.1 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.

5.2 The period covered by each Application for Payment shall be one calendar month ending on the 25TH day of the month, or as follows:

5.3 Provided an Application for Payment is received by the Architect not later than the LAST DAY OF THE PRIOR MONTH day of a month, the Owner shall make payment to the Contractor not later than the 15TH day of the 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 30 days after the Architect receives the Application for Payment.

5.4 Each Application for Payment shall be based upon the 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 and 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 Applications for Payment.

5.5 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.

5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows: **5.6.1.** completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of 0 (ZERO) percent (%). Pending final determination of cost to the Owner of changes in the Work, amounts not in the dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions even though the Contract Sum has not yet been adjusted by Change Order;

5.6.2 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 percent(ZERO %);

5.6.3 Subtract the aggregate of previous payments made by the Owner; and

5.6.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

5.7 The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances:

5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to percent(100 %) of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work and unsettled claims; and

5.7.2 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 the General Conditions. **5.8** Reduction or limitation of retainage, if any, shall be as follows:

1

ARTICLE 6 FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final

Certificate for Payment, or as follows:

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Where reference is made in this Agreement to a provision of the General Conditions 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 at The Owner's and Contractor's principal places of business, The location of the Project and elsewhere may effect 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 Other provisions:

TERMINATION OR SUSPENSION

ARTICLE 8

8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

8.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows: 9.1.1

The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document A101, 1987 Edition.

9.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201, 1987

Edition. 9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated and are as follows:

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

9.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 9.1-3, and are as follows:

(Either list The Specifications here or refer to an exhibit attached to this Agreement.)

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

GENERAL OUTLINE SPECIFICATIONS AS SHOWN ON DRAWINGS PREPARED BY
HUGHES ENG.

9.1.5 The Drawings are as follows, and are dated
(Filter list the Draft, Illgs here or refer to an exhibit attached to this Agreement.)

unless a different date is shown below:

Number

Title

Date

HUGHES ENGINEERING DRAWINGS A-1 AND A-2 DATED 03-30-00

6 The addenda, if any, are as follows:

Number

Date

Pages

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

(List here any additional documents which are intended to form part of the Contract Documents. If General Conditions provide that bidding requires 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.)

CONSERVCO BID LETTER DATED FEBRUARY 04, 2000 CONSISTING OF FIVE PAGES AND INCLUDED THEREIN AS EXHIBIT (A)

CONSERVCO REVISION LETTER DATED FEBRUARY 22, 2000 CONSISTING OF TWO PAGES AND INCLUDED HERIN AS EXHIBIT (B)

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

Joseph K. & D. K.

CONTRACTOR (Signature)

(Signature)

J. F. Kane
JOSEPH F. KANE, PRES.

(Printed name and title)

J. F. KANE, PRES.
(Printed name and title)

CAUTION: YOU Should sign an original AIA document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

AIA DOCUMENT A101 0 OWNER-CONTRACTOR AGREEMENT • TWELFTH EDITION • AIA* 1987
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006

A101-1987 8

WARNING: Unlicensed photocopying violates U.S. copyright laws and is subject to legal prosecution.

1

February 4, 2000

K Management
PO Box 248
Portage, PA.
15946

Re: Clearfield Burger King

Gentlemen;

We propose to furnish all labor, materials, tools, and equipment necessary to accomplish the following scope of work:

SALVAGE

1. Remove for salvage all components of the existing solarium. Deliver and cover same to the Glen Richey address

DEMOLITION

1. Remove all concrete curbing starting at the refuse area and proceeding around the drive in to the front entrance
2. Remove all asphalt curbing
3. Remove concrete pad at the drive-in order area
4. Remove concrete pad at the drive in food area
5. Remove exterior concrete pad at the entrance
6. Remove concrete walks as needed
7. Remove concrete apron area at the existing solarium
8. Remove all areas of the reworked mansard
9. Remove finishes on the wall common with the dining room and solarium
10. Remove existing plastic roof trim.
11. Remove concrete blocks at the dumpster area
12. Remove the flag pole ?

EXTERIOR CONSTRUCTION

1. Install approximately 850 lineal feet of new concrete curbing being 18 inches deep tapered to six inches at the top with six inches of exposure. Curbing to be of high early concrete and to receive a rubbed finish
2. Install new concrete pads at the order placement station and the order pick up station. Pads to be sized as existing, reinforced with a double mat of # 5 rebar running 12 inch on center both ways. Pads to be 8 inches thick of 5,500 psi high early concrete. Pads to have a light broom finish and to have two seal coats. Sensor wiring furnished by other is to be installed by Conservco
3. Complete backfill of excess curb excavated area with 2-B gravel
4. Installation of plus or minus four inches of BCBC in the inside curb area
5. Complete overlay of the drive-thru area with 1 1/2 " of ID-2
6. Existing blacktop to be milled to accommodate overlay
7. Rough backfill of the outside curb area

EXTERIOR BUILDING CONSTRUCTION

1. Remove all shingles on the existing mansard (optional)
2. Remove existing entrance doors
3. Install new entrance complete (See allowances)
4. Reshingle mansard roof
5. Pour new concrete sidewalks and approaches as required by the final layout

INTERIOR PLAYGROUND

1. Construct playground in accordance with Burger King drawings numbered A-12A; A-12B, A-12C, A-12C.
2. The above drawings are general in nature, we have made adjustments to accommodate local and existing conditions.

3. It is possible that portions of the foundation of the existing structure can be utilized. In our pricing we have figured on all new footer and foundation. If the existing can be incorporated into the design a credit will be offered.
4. In designing and pricing of the playground it has been assumed that there is sufficient electrical panel space to accommodate the additional loading of the playground.
5. The design of the playground includes a completely independent HVAC system. It is assumed that there is sufficient gas capacity and pipe size to accommodate the additional load. It is noted that the HVAC unit does not call for an economizer.
6. It is noted that the playground unit as built in Johnstown appears to have a higher elevation than those shown on the bid documents. We have used the bid document in our estimate
7. The bid documents indicate a exit door coming out of the playground. We have not included this item

INCLUSIONS

1. Local permits
2. Labor & Industry approval
3. Local engineer stamped drawings
4. Local footer design
5. Daily cleanup and removal of debris
6. Off site disposal of concrete, asphalt, and excess excavated materials.

EXCLUSIONS

1. Sprinkler system
2. Landscaping
3. Furnishing or installing playground equipment
4. Furnishing or installing seating fixtures
5. Furnishing or installing the cupola
6. Existing roof repairs

MISCELLANEOUS

1. We have included moneys to replace the plastic band at the top of existing roof. It is assumed that you will furnish the materials
2. We have included erecting a temporary security/safety fence around the playpen construction sight
3. Any open areas for curbing etal will be double barricaded during off construction periods with flashing warning lights
4. Given that the existing brick is painted we have included painting of the new brick construction
5. To lessen the traffic into the operating restaurant we have included moneys for a portable sanitary facility
6. We have assumed that you will supply all required construction electrical and water requirements.
7. We note that the bid documents indicate that the playpen HVAC unit is located on the restaurant area. Since we do not know the collateral load capacities of the existing we have located the unit on the new roof.
8. The final dimensions of the Playpen area may have to be adjusted to accommodate the existing layout. This should no have a pricing impact.
9. The HVAC as designed is very expensive. We have priced the project using the exact system called for in the documents. A nice savings could be recognized if we redesigned the system.
10. We have included moneys for constructing and maintaining a temporary walkway into the store during that brief period when the entrance id under construction.
11. The prototype drawings indicate roof drains going into existing roof drain. We do not know if the existing building has drains or if they are sized to accommodate additional loading. We have reworked the drains to go to daylight.
12. The documents did not indicate any wall receptacles. We have included six in our pricing all to be GFI protected
13. We have included installation of the vinyl wallpaper and application of the stencil work.
14. Although we have excluded furniture and fixture setup we have completed this item on many retail stores and would be pleased to give you pricing

PRICING

1. Our total price for the above captioned project including all insurance and taxes amount to \$ 148,841.00.
2. Included in the above pricing is an allowance of \$ 10,000.00 for all materials

and labor involved in the construction of the undersigned entrance area
This allowance would include two double entrances and all construction elements required to provide a "turnkey" project. If you elect to proceed with our Company we would have the design work completed prior to construction so that the true cost could be determined before any work is uneaten.

3. Included in the above pricing is a material allowance of \$ 3.00 per square foot or the purchase of flooring materials
4. Included in our pricing is a material and labor cost of \$ 2,500.00 to reshingle the balance of the mansard roof
5. If you elect to eliminate all work related to refurbishing the Drive-thru area you may deduct \$ 24,000.00
6. If the existing solarium can be discarded in lieu of salvaged deduct \$ 4,000.00

We estimate the project will take six to eight weeks to accomplish. It must be recognized that the paving elements of the project are weather sensitive. We are in a position to start the drive thru work immediately and will follow up with the playpen upon completion of the local design work and issuance of a building permit. In order to minimize interruption of your business during your peak hours we will start the project at first light (5:30 to 6:00 A.M.) and minimize noise levels as directed by your management. Our staff will park off site and we will keep materials inventory to the bare minimum. Thank you for affording us the opportunity of submitting pricing on this project. We are currently working on projects in the Clearfield Fireman's Industrial Park and the K-Mart Plaza. This should aid us in transporting crews and materials to your site.

Sincerely Yours,

Joseph F. Kane

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

February 22, 2000

K Management
PO Box 248
Portage, PA.
15946

via fax 941-488-8235

Re: Clearfield Burger King

Dear Joe;

Good Morning, Its headed for 50 degrees this week, maybe, just maybe Spring is on its way. Reference our on site meeting of Saturday the 19th we offer the following revisions:

- Item One: In lieu of the drive thru repairs indicated on the first proposal substitute the following:
- A. Remove all asphalt curbing.
 - B. Remove concrete curbing starting at the food pick up area and proceeding on the inside radius of the drive way to the end of the driveway.
 - C. Repair excavated areas with select backfill and BCBC to grade.
 - D. Overlay the entire area with 1 & 1/2 inch of ID-2 milled into the existing.

DEDUCT FROM THE BASE PRICE \$ 16,000.00

- ITEM TWO Effect repairs to the mansard roof as follows:
- A. Remove approximately 220 lineal feet of existing vinyl soffit and fascia materials to run around the perimeter of the building including the canopy at the take out pick up area.
 - B. Install new vinyl soffit materials including "J" trim on all area.
 - C. Install new vinyl or plastic covered fascia board.
 - D. Include an allowance of \$ 300.00 for material purchase of Fascia board.

ADD TO THE BASE PRICE: \$ 2,600.00

3

CONSERVCO

GENERAL CONTRACTORS

MAILING ADDRESS
805 SOUTH SECOND STREET
CLEARFIELD, PA. 16830

OFFICE ADDRESS
ONE WASHINGTON AVENUE
HYDE, PA. 16843

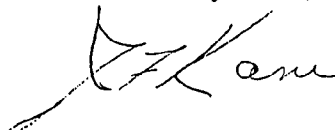
J. F. KANE
R. HELSEL
(814) 765-6725
FAX: (814) 765-2380

PRICING

1. Our total price for the above captioned project including all insurance and taxes amount to \$ 148,841.00.
2. Included in the above pricing is an allowance of \$ 10,000.00 for all materials and labor involved in the construction of the undersigned entrance area. This allowance would include two double entrances and all construction elements required to provide a "turnkey" project. If you elect to proceed with our Company we would have the design work completed prior to construction so that the true cost could be determined before any work is unneaten.
3. Included in the above pricing is a material allowance of \$ 3.00 per square foot or the purchase of flooring materials
4. Included in our pricing is a material and labor cost of \$ 2,500.00 to reshingle the balance of the mansard roof
5. If you elect to eliminate all work related to refurbishing the Drive-thru area you may deduct \$ 24,000.00
6. If the existing solarium can be discarded in lieu of salvaged deduct \$ 4,000.00

We estimate the project will take six to eight weeks to accomplish. It must be recognized that the paving elements of the project are weather sensitive. We are in a position to start the drive thru work immediately and will follow up with the playpen upon completion of the local design work and issuance of a building permit. In order to minimize interruption of your business during your peak hours we will start the project at first light (5:30 to 6:00 A.M.) and minimize noise levels as directed by your management. Our staff will park off site and we will keep materials inventory to the bare minimum. Thank you for affording us the opportunity of submitting pricing on this project. We are currently working on projects in the Clearfield Fireman's Industrial Park and the K-Mart Plaza. This should aid us in transporting crews and materials to your site.

Sincerely Yours,



3

a

CONSERVCO

GENERAL CONTRACTORS

MAILING ADDRESS
P.O. Box 1404
CLEARFIELD, PA. 16830

OFFICE ADDRESS
ONE WASHINGTON AVENUE
HYDE, PA. 16843

J. F. KANE
(814) 765-6725
FAX: (814) 765-2380
E-MAIL:
conservco@clearnet.net

ITEM THREE Reconstruct the existing trash impound. The existing is a concrete block shelter with a brick veneer added that has been stuccod. The original attack was to dig down on the outside of the existing walls and pour a small concrete footer to create a brick ledge. Closer investigation of the existing revealed numerous cracks and impact damage. Economically we would be better served to removed all remnants of the above grade block and build a new unit using the following outline:

- A. Remove existing to grade.
- B. Increase the size at the entrance to square off the structure.
- C. Install new masonry units with a brick veneer on the exposed walls.
- D. Install a treated lumber top plate on the structure.
- E. Paint all exposed brick work.
- F. Install a bronze aluminum coping on top of all walls. This is recommended in lieu of a brick rowlock in order to better seal the top. from water infiltration.

ADD TO THE BASE PRICE: \$ 6,400.00

The cost of item three is influenced by the proximity of the electrical and the fact that it requires approximately 3,000 brick plus block to accomplish. We could construct a heavy limber unit was less money.

If these numbers are in line with your expectations we will get Labor & Industry started. I expect to be in Brookville tomorrow (Wednesday). Would you want me to stop and see the rest rooms ?

Joseph Kane

#4

K Management
PO Box 248
918 Main Street
Portage, PA
15946

Re: Clearfield Burger King
Route 879

INVOICE

PROJECT BILLING AT FLOOR
INSTALLATION AS PER
VERBAL CONVERSATION
CONTRACT AMOUNT
PRIOR BILLINGS

\$ 133,422.00
0.00

50 % BILLING

\$ 66,711.00

4

#5

September 20, 2000

Ms. Maureen Gathagan
Gathagan Enterprises
29 South Second Street
Clearfield, PA.
16830

Re: Burger King @ 879Fashion Bug

Dear Maureen;

Enclosed herein please find the final invoice for the aforementioned project. If it is K Management's responsibility please forward to them.

I don't know how to bill this we did many things that were not in the original bid while you or Joe's people did many things that we where to do.

Sincerely Yours

Joseph F. Kane

5

CONSERVCO

GENERAL CONTRACTORS

MAILING ADDRESS
P.O. Box 1404
CLEARFIELD, PA. 16830

OFFICE ADDRESS
ONE WASHINGTON AVENUE
HYDE, PA. 16843

J. F. KANE
(814) 765-6725
FAX: (814) 765-2380
E-MAIL:
conservco@clearnet.net

September 20, 2000

Ms. Maureen Gathagan
Gathagan Enterprises
29 South Second Street
Clearfield, PA.
16830

Re: Burger King @ 879

INVOICE

CONTRACT AMOUNT	\$ 133,422.00
DELETE BALANCE OF DRIVE WAY WORK	(\$ 8,000.00)
DELETE PURCHASE OF FURNACE	(\$ 5,500.00)
ADD DUMPSTER	\$ 4,500.00 —
ADD RESHINGLING OF MANSARD	\$ 2,600.00
ADD REAR DOOR	\$ 750.00 —
CONTRACT AMOUNT	\$ 127,772.00
PAID TO DATE	(\$ 66,711.00)
AMOUNT OF THIS INVOICE	\$ 61,061.00

5

#6

MEMORANDUM

DATE: 11/6/00
TO: JOE KANE
FROM: DAVID DEININGER DSD
RE: BURGER KING, CLEARFIELD

1)
C "

Following is the reconciliation of the final amount due Conservco for work on the Burger King in Clearfield.

Contract Amount	133,422	
Add: Dumpster	4,500	
Add: Rear Door	750	
Delete: Driveway/Drive-Thru (per item #5 under Pricing)	(24,000)	
Delete: Furnace	(5,500)	
Delete: Cost of bricks (copy of Kohlhepp invoice attached)	(822)	
Delete: Items completed by Tom Myers (copy attached)	(3,000)	Inv #305534
Delete: Items completed by Tom Myers (copy attached)	(4,331)	Inv #305542
Sub-Total	101,019	
Less: Amounts previously paid	(66,711)	
FINAL AMOUNT DUE	34,308	

The scope and supplies included on the Kohlhepp & Tom Myers invoices are included in the original contract/quote, thus the reason for the deduction. The driveway work was deducted at \$24,000 per the language of item #5 under Pricing in the contract.

DSD

11/6/00

Confidential

6

7

November 20, 2000

Ms. Maureen Gathagan
Gathagan Enterprises
29 South Second Street
Clearfield, PA.
16830

Re: Burger King @ 879

Dear Maureen

I must assume that your recent partial payment was nothing more than a miss understanding of the contract. I wish your Mr. Deininger would have paid us the courtesy of calling prior to sending this partial payment. Following is recap:

- 1 Original contract amount as per our signed contract was \$ 148,841.00 dated 02-04-00. (enc. "A")
- 2 On 02-05-00 via our letter (copy enclosed mark "B") the scope of the driveway work was reduced by \$ 16,000.00 leaving a balance of \$ 8,000.00. At the same time it was decided to add soffit and fascia materials around the existing building at an additional cost of \$ 2,600.00
- 3 During an on site meeting with Mr. K it was decided to eliminate the flag pole, the receptacles, and red plastic band from the play room addition. This resulted in a credit of \$ 2,019.00.
- 4 At the beginning of the project the contract sum stood as follows:

Contract amount	\$ 148,841.00
Delete partial driveway work	(\$16,000.00)
Add soffit work	\$ 2,600.00
Delete banding etal	(\$ 2,019.00)

Contract amount:	\$ 133,422.00
------------------	---------------

7

5. As the project progressed the rear door was added along with the dumpster. These two items resulted in additional costs of \$ 5,250.00. The driveway work was none under a separate contract resulting in the reduction of your contract by the remaining balance of \$ 8,000.00. In addition the furnace was part of our contract. You furnished the unit and we credited it out at \$ 5,500.00. At this point the contract stood at the following

Revised contract amount	\$ 133,422.00
Add T & M dumpster	4,500.00
Add rear door	750.00
Delete balance of driveway	(8,000.00)
Delete furnace	(5,500.00)

Revised Contract amount:	\$125,172.00
--------------------------	--------------

6. Against this contract amount you made a payment of \$ 66,711.00 and \$ 34,308.00 leaving a balance due of **\$ 24,153.00**
7. On 11-06-00 we received an overview from a David Deininger that was incomplete at best. The enclosed copy (enclosure " C") contained the following errors
- Mr. Deininger used the wrong contract amount. He was able to determine the line five credit of \$ 24,000.00 but couldn't see the line above indicating the contract amount of \$ 148,842.00
 - The dumpster pricing in the contract was \$ 6,400.00. We reduced the amount to \$ 4,500.00 because you furnished the brick and added the top camp.
 - The rear door amount is correct
 - The driveway credit of \$ 24,000.00 is incorrect. \$ 16,000.00 of this amount was already taken out of the contract
 - The brick charge of \$ 822.00 is incorrect. The cost of the brick was recognized in our reducing the dumpster price by \$ 1,900.00
 - The Myers invoice # 3055434 was deduced from our contract in the amount of \$ 3,000.00 with out any itemization. Mr. Myers invoice indicated an attached list. We where not sent

same. The Myers invoice # 305542 was deducted from our invoice in the amount of \$ 4,331.00. This invoice included a rough outline of the work included. A review of same reveals that with the exception of the painting of the addition none of the work was under our contract.

I believe items "a" thru "e" represent a misunderstanding of the contract. Item "f" is completely wrong. In our cover letter (enc. "D")that included our invoice we indicated that we completed many items that where not in our contract while your forces completed items that where in our contract.

Apparently Mr. Deininger chose to ignore our extras. Consider the following;

- a. The square footage of the addition was increased at no additional charge.
- b. The exterior lights where rewired at not additional charge
- c. The main panel was reworked at no additional charge.
- d. The rear exposed wiring to the sign was reworked at no additional charge.
- e. The contract included an allowance of \$ 300.00 for fascia trim. The actual cost of same was \$ 1,700.00. You were not charged the additional \$ 1,400.00
- f. The contract included an allowance f \$ 10,000.00 for the vestibule. The final cost was \$ 11,250.00. You where not charged the additional amount.
- g. We designed the project heating around a low profile unit and installed the roof curb accordingly. The unit we received was completely different requiring reworking the curb size and redoing the roof. The added cost of \$ 760.00 for labor and \$ 1,100.00 for reworking the roofing was not charges to you.

If Mr. Deininger has any additional questions on this matter please have him contact me. Otherwise I assume we will receive the balance due by December 15, 2000.

Sincerely Yours;

7

8

July 26, 2001

Mr. Joe Kondisko
P.O. Box 248
Portage, PA.
15946

Re: Clearfield Burger King

Dear Mr. Kondisko

I apologize for being so long in revisiting the above project. At our age time seems to fly by.

We have analyzed the invoices Mr. Deninger sent to us and remain at a complete loss as to why our final payment of \$ 24,143.00 remains unpaid

Before this becomes a legal matter please consider the following:

1. We bear no responsibility for the HVAC. You are presenting the argument that nearly \$25,000.00 was spent to relocate a unit 20 plus feet. That's ridiculous, there's not a court in the world that would believe it took **340 man-hours** (enclosure # 1) to relocate this unit. Our contract specifically states that the unit was to be placed on the new roof. We spend \$ 2,200.00 to rework the curb because the wrong unit was sent. You were not charged for this.
2. There is no question that your people did some of the work under our contract. Likewise there is no question that we did additional work that wasn't under our contract. You are back charging us 90% of Tom's invoice # 305534. The only item on there that was ours was painting the addition. On invoice # 305542 you are again charging us 90% when almost none of the items are ours.
3. On the dumpster you are back haring us for the brick. That portion of the project was T & M. How can you charge us for something that you weren't charged for?

4. On the paving issue you are deducting \$ 24,000.00 from our invoice when we only had a balance of \$ 8,000.00 for the item. \$ 16,000.00 was already removed in the prior negotiations. You enclosed an invoice from Porter which simply states " To Do " list ", \$ 24,793.18. How much was in our contract? How much were items you added. With no detail it's a blind guess.

I sincerely hope that we can avoid the lawyers in this matter. Lawyer's fees, interest charges, Procurement laws, we both will lose, but as it stand now, I am the only loser. Please reconsider your position on the balance of \$ 24,153.00.

Sincerely Yours,

Joseph F. Kane

WILLIAM A. SHAW, JR.
ATTORNEY AT LAW
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

				WILLIAM A. SHAW, JR. ATTORNEY AT LAW 211 NORTH SECOND STREET CLEARFIELD, PA 16830
--	--	--	--	--

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

JOSEPH F. KANE, d/b/a Conservco
Plaintiff

vs.

JOSEPH R. KONDISKO and ALLANA M.
KONDISKO, K-MANAGEMENT GROUP,
INC., d/b/a Burger King
Defendants

No. 02-334-CD

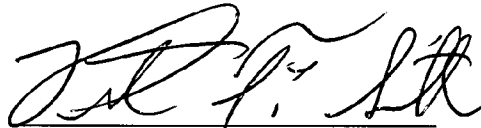
P R A E C I P E

To: William A. Shaw, Prothonotary of Clearfield County

Dear Sir :

Please enter my appearance as counsel for the Defendants in the above captioned matter.

Respectfully submitted



Peter F. Smith, Esquire

Dated: June 10, 2002

cc: William A. Shaw, Jr., Esquire
Attorney for Plaintiffs

FILED

JUN 10 2002

0/11:30/ver
William A. Shaw
Prothonotary



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

JOSEPH F. KANE, d/b/a Conservco
Plaintiff

vs.

JOSEPH R. KONDISKO and ALLANA M.
KONDISKO, K-MANAGEMENT GROUP,
INC., d/b/a Burger King
Defendants

No. 02-334-CD

Type of Case:
CIVIL

Type of Pleading:
PRELIMINARY OBJECTIONS

Filed on Behalf of:
DEFENDANTS

Attorney for this party:
Peter F. Smith, Esquire
Supreme Court No. 34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

Attorney for the Plaintiff
William A. Shaw, Jr.
P.A. I.D. # 78007
211 N. Second Street
Clearfield, PA 16830
(814) 765-1910

FILED

JUN 10 2002

0/11:30/12
William A. Shaw
Prothonotary

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

JOSEPH F. KANE, d/b/a Conservco
Plaintiff

vs.

JOSEPH R. KONDISKO and ALLANA M.
KONDISKO, K-MANAGEMENT GROUP,
INC., d/b/a Burger King
Defendants

No. 02-334-CD

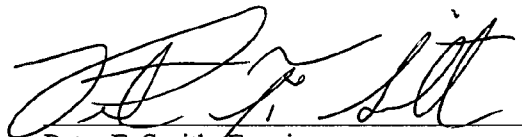
PRELIMINARY OBJECTIONS

COMES NOW, the Defendants by their attorney Peter F. Smith who make the following Preliminary Objections to the Complaint:

1. This suit concerns a construction contract.
2. Suit has been brought in the name of "Joseph F. Kane, d/b/a Conservco".
3. The contract sued upon which is attached to the complaint as Exhibit 1 indicates that the contractor is actually "BJR, Inc. d/b/a Conservco."
4. The complaint does not explain how Joseph F. Kane has standing to initiate this suit.
5. The contract sued upon indicates that Conservco is a fictitious name of an unidentified corporate entity.

WHEREFORE, Defendants request that the Court enter an order dismissing the complaint.

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Defendants

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

JOSEPH F. KANE, d/b/a Conservco
Plaintiff

vs.

JOSEPH R. KONDISKO and ALLANA M. :
KONDISKO, K-MANAGEMENT GROUP, :
INC., d/b/a Burger King :
Defendants :

No. 02-334-CD

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for Defendants in the above-captioned matter, certify that I sent by First Class Mail, postage prepaid to William A. Shaw, Jr., attorney for the Plaintiff, a true and correct copy of the **PRELIMINARY OBJECTIONS** and the **PRAECIPE ENTERING MY APPEARANCE** on June 10, 2002, at the following address:

William A. Shaw, Jr., Esquire
Attorney for Plaintiff
211 N. Second Street
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Attorney for CNB

Date: June 10, 2002

FILED

JUN 10 2002

0/11:30/105
William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12220

KANE, JOSEPH F. d/b/a CONSERVCO

02-334-CD

VS.

KONDISKO, JOSEPH R. & ALLANA M. AI

COMPLAINT

SHERIFF RETURNS

NOW APRIL 18, 2002, CHRIS SCHERER, SHERIFF OF WESTMORELAND COUNTY
WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY
TO SERVE THE WITHIN COMPLAINT ON JOSEPH R. KONDISKO, DEFENDANT.

NOW MAY 20, 2002 SERVED THE WITHIN COMPLAINT ON JOSEPH R.
KONDISKO, DEFENDANT BY DEPUTIZING THE SHERIFF OF WESTMORELAND
COUNTY. THE RETURN OF SHERIFF SCHERER IS HERETO ATTACHED AND
MADE A PART OF THIS RETURN.

Return Costs

Cost	Description
19.37	SHFF. HAWKINS PAID BY: ATTY.
37.30	SHFF. SCHERER PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.
<u>66.67</u>	

FILED

JUN 12 2002

0/9/16

William A. Shaw
Prothonotary

Sworn to Before Me This

12th Day Of June 2002
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
by Marilyn Harris
Chester A. Hawkins
Sheriff

DK

CHRIS SCHERER, SHERIFF OF WESTMORELAND COUNTY
2 NORTH MAIN STREET
GREENSBURG, PA 15601
(724) 830-3457 FAX (724) 830-3660

DATE 4-23-02
RECEIPT 13330
PAGE 30

LAST DAY TO SERVE: 5-18-02

PLAINTIFF: Joseph F. Kane, dba Conserved

VS.

DEFT(S): Joseph R. Kondisko

SERVE: Joseph R. Kondisko
(DEFT (S)/GARNISHEE)

ADDRESS: 333 Via nobile Street
Greensburg Pa 15601

INDICATE TYPE OF SERVICE:

- ☐ PERSON IN CHARGE ☐ PERSONAL ONLY ☐ DEPUTIZE
☐ CERT. MAIL ☐ POST ☐ OTHER
☐ SEIZE & STORE

CASE NO.

- Clearfield County
12-334-00
- ☐ SUMMONS
☐ SEIZURE OR POSSESSION
☒ NOTICE/COMPLAINT
☐ REVIVAL OR SCI FA
☐ INTERROGATORIES
☐ EXECUTION, GARNISHEE
☐ HANDBILL
☐ NOTICE OF SALE/DEBTORS RIGHT
☐ OTHER
☐ LETTER MAILED

ATTY: Clearfield County
ADDRESS: North Second St Ste 116
Clearfield Pa 16830
PHONE: _____
DATE: _____

SHERIFF'S OFFICE USE ONLY

I hereby CERTIFY and RETURN that on the 20th day of MAY, 2002, at
1220 O'clock, A.M./P.M. Address Above/Address Below, County of Westmoreland, Pennsylvania

I have served in the manner Described below:

- ☒ Defendant(s) personally served.
☐ Adult in charge of Defendant's residence at time of serve (name & relationship) _____
☐ Manager/other person authorized to accept _____
☐ Agent or person in charge of Defendant(s) office or usual place of business. _____
☐ Other _____
☐ Property Posted _____

Defendant not found because: ☐ Moved ☐ Unknown ☐ No Answer ☐ Vacant ☐ Other _____
☐ Certified Mail ☐ 1st Class Mail ☐ Ordinary Mail/Certificate of Mailing _____

ATTEMPTS 4-24-02 140P 5-16-02 825A 510

SO DEPUTY SHARKE

Westmoreland County Costs	DS/Notary	Deputized County Costs	Costs Due	Refund	Total Costs (West. Co. Only)
\$ <u>35.30</u>	\$ <u>2.00</u>	\$	\$ <u>7.20</u>	\$	\$ <u>37.30</u>

NOW: _____ 20____ I, SHERIFF OF WESTMORELAND COUNTY, PA do hereby deputize the Sheriff of
County to execute this Writ and make return thereof according to law.

CK# _____ \$ _____

SHERIFF

AFFIRMED and subscribed to before me this

24th Day of May 2002

Notarial Seal
Rosemary Spangler, Notary Public
Greensburg, Westmoreland County
My Commission Expires Dec. 19, 2005

Deputized Sheriff

Rosemary Spangler
Notary Public/Prothonotary

Signature of Sheriff (Westmoreland County)

Date
5-22-02
Date

Prothonotary (White Copy)

Attorney (Canary Copy)

Sheriff (Pink Copy)

Deputized Sheriff (Gold Copy)

CHRIS SCHERER, SHERIFF OF WESTMORELAND COUNTY
2 NORTH MAIN STREET
GREENSBURG, PA 15601
(724) 830-3457 FAX (724) 830-3660

DATE _____
RECEIPT _____
PAGE _____

LAST DAY TO SERVE: _____

PLAINTIFF: _____

VS.

DEFT(S): _____

SERVE: _____
(DEFT (S)/GARNISHEE)

ADDRESS: _____

CASE NO. _____

- ☐ SUMMONS
☐ SEIZURE OR POSSESSION
☐ NOTICE/COMPLAINT
☐ REVIVAL OR SCI FA
☐ INTERROGATORIES
☐ EXECUTION, GARNISHEE
☐ HANDBILL
☐ NOTICE OF SALE/DEBTORS RIGHT
☐ OTHER
☐ LETTER MAILED _____

INDICATE TYPE OF SERVICE:

- ☐ PERSON IN CHARGE ☐ PERSONAL ONLY ☐ DEPUTIZE
☐ CERT. MAIL ☐ POST ☐ OTHER
☐ SEIZE & STORE

ATTY: _____
ADDRESS: _____
PHONE: _____
DATE: _____

SHERIFF'S OFFICE USE ONLY

I hereby CERTIFY and RETURN that on the _____ day of _____, 20____, at _____ O'clock, A.M./P.M. Address Above/Address Below, County of Westmoreland, Pennsylvania

I have served in the manner Described below:

- ☐ Defendant(s) personally served _____
☐ Adult in charge of Defendant's residence at time of serve (name & relationship) _____
☐ Manager/other person authorized to accept _____
☐ Agent or person in charge of Defendant(s) office or usual place of business. _____
☐ Other _____
☐ Property Posted _____

Defendant not found because: ☐ Moved ☐ Unknown ☐ No Answer ☐ Vacant ☐ Other _____

☐ Certified Mail ☐ 1st Class Mail ☐ Ordinary Mail/Certificate of Mailing

ATTEMPTS _____ / _____ / _____

DEPUTY _____

Westmoreland County Costs	DS/Notary	Deputized County Costs	Costs Due	Refund	Total Costs (West. Co. Only)
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

NOW: _____ 20____ I, SHERIFF OF WESTMORELAND COUNTY, PA do hereby deputize the Sheriff of _____ County to execute this Writ and make return thereof according to law.

CK# _____ \$ _____

SHERIFF

AFFIRMED and subscribed to before me this

_____ Day of _____ 20____

Deputized Sheriff

Date

Notary Public/Prothonotary

Prothonotary (White Copy)

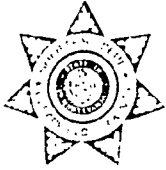
Attorney (Canary Copy)

Signature of Sheriff (Westmoreland County)

Sheriff (Pink Copy)

Deputized Sheriff (Gold Copy)

Date



Sheriff's Office Clearfield County

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

CHESTER A. HAWKINS
SHERIFF

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

DARLENE SHULTZ
CHIEF DEPUTY

MARGARET PUTT
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH F. KANE d/b/a Conservco

TERM & NO. 02-334-CD

VS

SERVE BY: 5/18/02

JOSEPH R. KONDISKO a1

DOCUMENT TO BE SERVED:
COMPLAINT


MAKE REFUND PAYABLE TO: WILLIAM A. SHAW JR.

SERVE: JOSEPH R. KONDISKO

ADDRESS: 333 Via Nobile St., Greensburg, Pa 15601

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 WESTMORELAND COUNTY Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 18th Day of APRIL 2002.

Respectfully,


CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY



CUSTOMER'S COPY

REFER TO THIS
NUMBER**CHRIS SCHERER, SHERIFF**

WESTMORELAND COUNTY

2 NORTH MAIN STREET

GREENSBURG, WESTMORELAND COUNTY, PA 15601

14136

PLAINTIFF	JOSEPH F KANE		
DEFENDANT	JOSEPH R. KONDUSKO		
FILED BY	CLEARFIELD COUNTY SHERIFF		
NO. AND TERM	CLEARFIELD 02-334-CP		DATE 6/3/02
DESCRIPTION		AMOUNT	
<input checked="" type="checkbox"/> Complaints, Writs, etc.	Balance	7	20
<input type="checkbox"/> Deputy Surcharge			
<input type="checkbox"/> Notary			
<input type="checkbox"/> Execution			
<input type="checkbox"/> Garnishment			
<input type="checkbox"/> Property Claim	paid		
<input type="checkbox"/> Pistol Permit No.			
<input type="checkbox"/> License			
<input checked="" type="checkbox"/> Other	(mm)		
<input checked="" type="checkbox"/> CHECK	CHECK NO.	CLERK	TOTAL ▶
<input checked="" type="checkbox"/> CASH	21851	Dt	7 20



CUSTOMER'S COPY

REFER TO THIS
NUMBER

CHRIS SCHERER, SHERIFF

WESTMORELAND COUNTY

2 NORTH MAIN STREET

GREENSBURG, WESTMORELAND COUNTY, PA 15601

13330

PLAINTIFF	Joseph F. Kane dba Conservation		
DEFENDANT	Joseph R. Kondisko		
FILED BY	Wm. A. Shaw Jr		
NO. AND TERM	Clearfield 02-334-00		DATE 4/23/02
DESCRIPTION		AMOUNT	
<input checked="" type="checkbox"/> Complaints, Writs, etc.			28 10
<input type="checkbox"/> Deputy Surcharge			
<input checked="" type="checkbox"/> Notary			2 00
<input type="checkbox"/> Execution	paid		
<input type="checkbox"/> Garnishment			
<input type="checkbox"/> Property Claim			
<input type="checkbox"/> Pistol Permit No.			
<input type="checkbox"/> License			
<input checked="" type="checkbox"/> Other	(CM)		
<input checked="" type="checkbox"/> CHECK		CHECK NO.	CLERK
<input type="checkbox"/> CASH		1843	DK
TOTAL ▶		30 10	

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(Civil Division)

JOSEPH F. KANE, d/b/a/ Conservco

v.

JOSEPH R. KONDISKO and ALLANA M.
KONDISKO, K-MANAGEMENT GROUP, INC.,
d/b/a/ Burger King

No. 02-334-CD

Type of Pleading:

AMENDED COMPLAINT

Filed on Behalf of:

PLAINTIFF

Counsel for Plaintiff:

William A. Shaw, Jr., Esquire
I.D. # 78007

Attorney at Law
211 N. Second Street
Clearfield, PA 16830
(814) 765-1910

JURY TRIAL DEMANDED

FILED

JUN 25 2002
0110:4314 cc atty Shaw
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(Civil Division)

JOSEPH F. KANE, d/b/a/ Conservco

v.

JOSEPH R. KONDISKO and ALLANA M.
KONDISKO, K-MANAGEMENT GROUP, INC.,
d/b/a/ Burger King

:
:
:
:
:
:
:

No. 02-334-CD

NOTICE TO DEFEND AND CLAIM RIGHTS

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 (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 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, Pennsylvania 16830
(814) 623-4812

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(Civil Division)

JOSEPH F. KANE, d/b/a/ Conservco

v.

JOSEPH R. KONDISKO and ALLANA M.
KONDISKO, K-MANAGEMENT GROUP, INC.,
d/b/a/ Burger King

No. 02-334-CD

AMENDED COMPLAINT

NOW, comes the Plaintiff, Joseph F. Kane, by and through his attorney, William A. Shaw, Jr., Esquire, and files the following Complaint.

1. The Plaintiff, Joseph F. Kane (Kane), is an adult individual residing at PO Box 1404, Clearfield, Pennsylvania, 16830.
2. Kane is the sole Owner and President of BJR, Inc. d/b/a Conservco, a construction company and a Pennsylvania Corporation, operating and existing under the laws of the Commonwealth of Pennsylvania, with a business address of P.O. Box 1404, Clearfield, PA 16830.
3. Defendants, Joseph R. Kondisko and Allana M. Kondisko (Kondisko) are the owners of K-Management Group, Inc., with a business address of PO Box 248, Portage, Pennsylvania, 15946.

4. Kondisko owns and operates a Burger King franchised restaurant (hereinafter Burger King), with a regular place of business near the intersection of Interstate 80 and State Route 879 in Lawrence Township, Clearfield County, Pennsylvania, 16830.

5. Kondisko required modifications to the Burger King and solicited Kane to perform the needed modifications.

6. By letter dated February 4, 2002, Kane provided Kondisko with a job estimate wherein Kane would furnish all labor, materials, tools, and equipment necessary to provide the requested modifications to Burger King. (Attachment 2).

7. By letter dated February 22, 2000, Kane provided an updated job estimate for the requested modifications to Burger King. (Attachment 3).

8. On or about March 22, 2002, the Defendant, Joseph R. Kondisko, agent for Allana M. Kondisko, K-Management, Inc., and Burger King, entered into a written Contract (Contract) with Kane, wherein Kane would perform requested remodeling at Burger King and Kondisko would compensate Kane in the amount of One Hundred Thirty Five Thousand Four Hundred Forty Two Dollars (\$135,442.00), an amount to be reduced by Two Thousand Twenty Dollars (\$2,020.00) due to the elimination of certain job responsibilities to be performed by Kane. (Attachment 1).

9. Kane performed the modifications to Burger King pursuant to the Contract.

10. Kane sent Kondisko the first invoice for payment in the amount of Sixty Six Thousand Seven Hundred Eleven (\$66,711.00). (Attachment 4).

11. On or about September 20, 2000, Kane sent Kondisko a final invoice in the

amount of Sixty One Thousand Sixty One Dollars (\$61,061.00). (Attachment 5).

12. By letter dated November 6, 2000, a Kondisko representative notified Kane that Kondisko was refusing to pay the agreed upon Contract Price. (Attachment 6).

13. By letter dated November 20, 2000, Kane acknowledged receipt of partial payments by Kondisko in the amounts of Sixty Six Thousand Seven Hundred Eleven Dollars (\$66,711.00) and Thirty Four Thousand Three Hundred Eight Dollars (\$34,308.00) and demanded Kondisko make final payment in the amount of Twenty Four Thousand One Hundred Fifty Three Dollars (\$24,153.00) (Attachment 7).

14. By letter dated July 26, 2001, Kane again contacted Kondisko and again demanded final payment of the total amount due. (Attachment 8) .

COUNT I BREACH OF CONTRACT

15. Paragraphs 1 - 14 are incorporated herein by reference.

16. Kane entered into a written Contract with Kondisko for construction and remodeling work at Burger King.

17. Kane has performed pursuant to the Contract.

18. Kane has demanded payment pursuant to the Contract terms.

19. Kondisko has refused and continues to refuse to pay Kane the amounts owed, without justification.

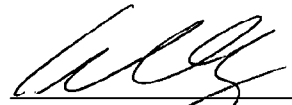
20. Kondisko willfully and intentionally breached the Contract entered into with

Kane, and Kane has lost profits, income, and incurred incidental costs as a result of Kondisko's breach.

WHEREFORE, The Plaintiff, Joseph F. Kane, demands judgment entered against Defendant's:

- a. Payment of the Contract Price Due \$24,153.00, an amount in excess of any jurisdictional amount requiring compulsory arbitration .
- b. Incidental Damages.
- c. Interest Fee.
- d. All other relief allowed by law.

Respectfully Submitted,

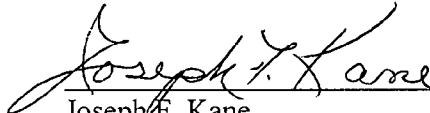


William A. Shaw, Jr.
Attorney for Plaintiff

VERIFICATION

I, Joseph F. Kane, verify that the statements made herein are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Date: 6 1241 02



Joseph F. Kane

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(Civil Division)

JOSEPH F. KANE, d/b/a/ Conservco

v.

JOSEPH R. KONDISKO and ALLANA M.
KONDISKO, K-MANAGEMENT GROUP, INC.,
d/b/a/ Burger King

No. 02-334-CD


CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of Plaintiff's Amended Complaint was served
in the manner indicated upon the following:

(U.S. Mail/First Class /Postage Pre-Paid)

Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

Date: 6/25/02



William A. Shaw, Jr., Esquire

WILLIAM A. SHAW, JR.
ATTORNEY AT LAW
211 NORTH SECOND STREET
CLEARFIELD, PA 16830

				WILLIAM A. SHAW, JR. ATTORNEY AT LAW 211 NORTH SECOND STREET CLEARFIELD, PA 16830
--	--	--	--	--

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

JOSEPH F. KANE, d/b/a Conservco
Plaintiff

vs.

JOSEPH R. KONDISKO and ALLANA M. :
KONDISKO, K-MANAGEMENT GROUP, :
INC., d/b/a Burger King :
Defendants :

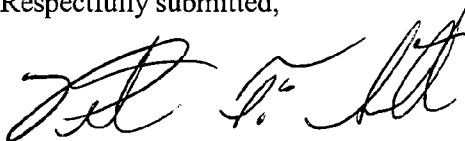
No. 02-334-CD

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for Defendants in the above-captioned matter, certify that I sent by First Class Mail, postage prepaid to William A. Shaw, Jr., attorney for the Plaintiff, a certified copy of the **RENEWED PRELIMINARY OBJECTIONS** on July 5, 2002, at the following address:

William A. Shaw, Jr., Esquire
Attorney for Plaintiff
211 N. Second Street
Clearfield, PA 16830

Respectfully submitted,



Date: July 5, 2002

Peter F. Smith, Attorney for Defendants

FILED

JUL 08 2002

William A. Shaw
Prothonotary

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

JOSEPH F. KANE, d/b/a Conservco
Plaintiff

vs.

JOSEPH R. KONDISKO and ALLANA M.
KONDISKO, K-MANAGEMENT GROUP,
INC., d/b/a Burger King
Defendants

No. 02-334-CD

Type of Case:
CIVIL

Type of Pleading:
**RENEWED PRELIMINARY
OBJECTIONS**

Filed on Behalf of:
DEFENDANTS

Attorney for this party:
Peter F. Smith, Esquire
Supreme Court No. 34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

Attorney for the Plaintiff
William A. Shaw, Jr.
P.A. I.D. # 78007
211 N. Second Street
Clearfield, PA 16830
(814) 765-1910

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

JOSEPH F. KANE, d/b/a Conservco
Plaintiff

vs.

JOSEPH R. KONDISKO and ALLANA M.
KONDISKO, K-MANAGEMENT GROUP,
INC., d/b/a Burger King
Defendants

No. 02-334-CD

RENEWED PRELIMINARY OBJECTIONS

COMES NOW, the Defendants by their attorney Peter F. Smith who make the following Preliminary Objections to the Complaint:

1. Defendants filed preliminary objections to the Complaint on June 10, 2002.
2. Plaintiffs objected that Joseph F. Kane does not have standing to initiate suit as a Plaintiff since the contract sued upon does not name him as a party.
3. On June 25, 2002, the Plaintiffs filed an Amended Complaint.
4. The Amended Complaint is the same as the original Complaint except that paragraph 2 now explains Joseph F. Kane is the "sole owner and president of BJR, Inc. d/b/a Conservco".
5. The Complaint still does not explain why Joseph F. Kane has standing to initiate suit in his personal capacity as opposed to his corporation, BJR, Inc., which is a distinct entity in the eyes of the law.

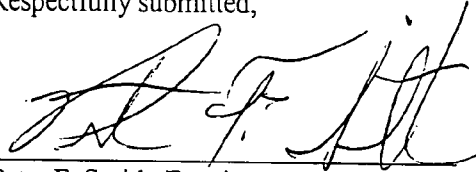
6. Attached hereto and incorporated herein by reference is a printout of the Pennsylvania Department of State's records obtained via the Internet indicating that BJR, Inc. owns the name Conservco. No mention is made of Joseph F. Kane.

7. The Complaint also names Allana M. Kondisko as a Defendant. Again, the contract sued upon which was attached as an Exhibit to the original Complaint does not identify Allana M. Kondisko as a party to the Agreement.

8. The Complaint does not elaborate how Allana M. Kondisko is otherwise a proper party to this litigation.

WHEREFORE, Defendants pray that the Court enter an order dismissing the complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. F. Smith', written over a horizontal line.

Peter F. Smith, Esquire
Attorney for Defendants

Date: July 5, 2002

Corporations
Home Page

DOS Home
Page

Corporations Department of State



[Return to Searchable Database Main Menu](#)

(Use Last Name, First Name for business names which consist
of a person's first and last name (i.e., Smith, John Inc.))

Fictitious Name Owners

ENTITY NO:	845421	
NAME:	CONSERVCO	
OWNER NAME:	FILED DATE:	TIME:
BJR INC	7-23-1998	15:56:46:13

[Basic Entity Information](#) | [Instrument History](#) |

Pennsylvania Department of State
206 North Office Building, Harrisburg, PA 17120
Phone - (717) 787-1057

EXHIBIT

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

JOSEPH F. KANE, d/b/a Conservco
Plaintiff

vs.

JOSEPH R. KONDISKO and ALLANA M.
KONDISKO, K-MANAGEMENT GROUP,
INC., d/b/a Burger King
Defendants

No. 02-334-CD

Type of Case:
CIVIL

Type of Pleading:
**RENEWED PRELIMINARY
OBJECTIONS**

Filed on Behalf of:
DEFENDANTS

Attorney for this party:
Peter F. Smith, Esquire
Supreme Court No. 34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

Attorney for the Plaintiff
William A. Shaw, Jr.
P.A. I.D. # 78007
211 N. Second Street
Clearfield, PA 16830
(814) 765-1910

FILED

JUL 08 2002

William A. Shaw
Prothonotary

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

JOSEPH F. KANE, d/b/a Conservco	:	
Plaintiff	:	
	:	No. 02-334-CD
vs.	:	
	:	
JOSEPH R. KONDISKO and ALLANA M.	:	
KONDISKO, K-MANAGEMENT GROUP,	:	
INC., d/b/a Burger King	:	
Defendants	:	
	:	

RENEWED PRELIMINARY OBJECTIONS

COMES NOW, the Defendants by their attorney Peter F. Smith who make the following Preliminary Objections to the Complaint:

1. Defendants filed preliminary objections to the Complaint on June 10, 2002.
2. Plaintiffs objected that Joseph F. Kane does not have standing to initiate suit as a Plaintiff since the contract sued upon does not name him as a party.
3. On June 25, 2002, the Plaintiffs filed an Amended Complaint.
4. The Amended Complaint is the same as the original Complaint except that paragraph 2 now explains Joseph F. Kane is the "sole owner and president of BJR, Inc. d/b/a Conservco".
5. The Complaint still does not explain why Joseph F. Kane has standing to initiate suit in his personal capacity as opposed to his corporation, BJR, Inc., which is a distinct entity in the eyes of the law.

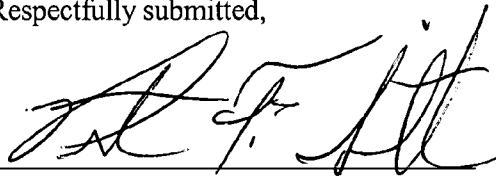
6. Attached hereto and incorporated herein by reference is a printout of the Pennsylvania Department of State's records obtained via the Internet indicating that BJR, Inc. owns the name Conservco. No mention is made of Joseph F. Kane.

7. The Complaint also names Allana M. Kondisko as a Defendant. Again, the contract sued upon which was attached as an Exhibit to the original Complaint does not identify Allana M. Kondisko as a party to the Agreement.

8. The Complaint does not elaborate how Allana M. Kondisko is otherwise a proper party to this litigation.

WHEREFORE, Defendants pray that the Court enter an order dismissing the complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. F. Smith', written over a horizontal line.

Peter F. Smith, Esquire
Attorney for Defendants

Date: July 5, 2002

Corporations
Home Page

DOS Home
Page

Corporations Department of State



[Return to Searchable Database Main Menu](#)

(Use Last Name, First Name for business names which consist
of a person's first and last name (i.e., Smith, John Inc.))

Fictitious Name Owners ?

ENTITY NO:	845421	
NAME:	CONSERVCO	
OWNER NAME:	FILED DATE:	TIME:
BJR INC	7-23-1998	15:56:46:13

[Basic Entity Information](#) | [Instrument History](#) |

Pennsylvania Department of State
206 North Office Building, Harrisburg, PA 17120
Phone - (717) 787-1057

EXHIBIT

Lap over margin

FILED

01/10:17
JUL 08 2002

William A. Shaw
Prothonotary

Atty Smith

PETER F. SMITH
ATTORNEY

30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PA. 16830

William A. Shaw, Jr.

Attorney at Law

211 North Second Street
Clearfield, PA 16830
Phone: (814) 765-1910
Fax: (814) 765-4410
E-Mail: attyshaw@clearnet.net

July 17, 2002

Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
ATTENTION: Marcy Kelley

RE: Kane v. Kondisko
No. 02-334-CD

Dear Marcy:

In response to the Amended Complaint filed in the above-captioned matter, Attorney Peter Smith filed Preliminary Objections. I do not intend to file a Second Amended Complaint and would respectfully request that a hearing be scheduled to determine the merit of Attorney Smith's Preliminary Objections.

Please contact me with any questions or concerns.

Sincerely yours,

/s/ William A. Shaw, Jr.

William A. Shaw, Jr.

WAS:nlc

cc: File
Peter F. Smith, Esquire
Joseph Kane

CA

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

JOSEPH F. KANE, d/b/a CONSERVCO :
 :
vs. : No. 02-334-CD
 :
JOSEPH R. KONDISKO and ALLANA M. :
KONDISKO, K-MANAGEMENT GROUP, :
INC., d/b/a BURGER KING :

ORDER

AND NOW, this 24 day of September, 2002, it is the ORDER of the Court that argument on Defendant's Renewed Preliminary Objections in the above matter has been scheduled for **Tuesday, October 29, 2002 at 11:00 A.M.** in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
Judge

FILED

SEP 24 2002

William A. Shaw
Prothonotary

FILED

SEP 24 2002

11:30 AM

1 cc Atty P. Smith
1 cc Atty W. Shaw Jr.

[Signature]

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

FILED

OCT 29 2002

JOSEPH F. KANE, d/b/a
CONSERVCO

-vs-

JOSEPH R. KONDISKO, al

:
:
:
:
:
:

No. 02-334-CD

William A. Shaw
Prothonotary

O R D E R

NOW, this 29th day of October, 2002, following argument on the Renewed Preliminary Objections filed on behalf of the Defendant, it is the ORDER of this Court as follows:

1. Defendant Allana M. Kondisko is hereby removed as a party Defendant in the case;
2. Either Plaintiff or remaining Defendants are at liberty to file interrogatories concerning the issue of who would be the appropriate parties in the case;
3. The Plaintiff has no more than sixty (60) days from this date in which to file an amended complaint;
4. In the event an amended complaint is not filed within the time period as set forth above or if it is filed and the listing of the parties does not meet with the satisfaction of the Defendant, Defense counsel shall ask for

reargument of the preliminary objections.

BY THE COURT,

Frederick J. Harman

Judge

FILED
OCT 29 2002
OCT 31 5 58 PM '02
REC'D SHAW
REC'D SHAW
WILLIAM A. SHAW
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(Civil Division)

JOSEPH F. KANE, d/b/a/ Conservco

v.

JOSEPH R. KONDISKO and ALLANA M.
KONDISKO, K-MANAGEMENT GROUP, INC.,
d/b/a/ Burger King


No. 02-334-CD

NOTICE OF DISCONTINUANCE

TO THE PROTHONATARY:

Kindly mark the above captioned matter as discontinued as to all Defendants.

Date 1/28/03


William A. Shaw, Jr., Esquire
Attorney for Plaintiff

FILED

JAN 29 2003

William A. Shaw
Prothonotary

FILED

3cc

Atty Shaw

013:05801
JAN 29 2003

Cert. of Disc

William A. Shaw
Proprietary

to Atty

copy to C/A
~~Atty~~

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

Joseph F. Kane
Conservco

Vs.

No. 2002-00334-CD

Joseph R. Kondisko
Allana M. Kondisko
K-Management Group, Inc.
Burger King

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 January 29, 2003 marked:

Discontinued

Record costs in the sum of \$87.00 have been paid in full by William A. Shaw, Jr., Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 29th day of January A.D. 2003.

William A. Shaw, Prothonotary