

02-1343-CD
Kitko Wood Product vs Daniel Carney al

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02-1343-CD
KITKO WOOD PRODUCTS, INC. -vs- DANIEL J. CARNEY & SON

WHITE AND WILLIAMS LLP
BY: Brian J. Schaffer, Esquire
Identification No.: 79292
1800 One Liberty Place
Philadelphia, PA 19103-7395
(215) 864-7000

Attorney for Plaintiff

KITKO WOOD PRODUCTS, INC.
ROUTE 53
P.O. BOX 3
GLEN HOPE, PA 16445

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

v.

DANIEL J. CARNEY & SON
103 KEYSTONE AVENUE
CRESSON, PA 16630

NO. 02-1343-CO

JURY TRIAL DEMANDED

NOTICE

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

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

PENNSYLVANIA LAWYER REFERRAL SERVICE

Telephone: (800) 692-7375

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

PENNSYLVANIA LAWYER REFERRAL SERVICE

Telephone: (800) 692-7375

FILED

AUG 28 2002

m/ll/solatty Shaffer pd 80.00

William A. Shaw
Prothonotary

lccSherry
lccatty Shaffer

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L

WHITE AND WILLIAMS LLP

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Philadelphia, PA 19103-7395
(215) 864-7000

Attorney for Plaintiff

KITKO WOOD PRODUCTS, INC.

**COURT OF COMMON PLEAS
CLEARFIELD COUNTY**

v.

NO.

DANIEL J. CARNEY & SON

JURY TRIAL DEMANDED

COMPLAINT

1. Plaintiff, Kitko Wood Products, Inc. (hereinafter "Kitko"), is a Pennsylvania corporation duly operating and existing under the laws of the Commonwealth of Pennsylvania with a place of business located at Route 53, Glen Hope, Pennsylvania.

2. At all times relevant hereto, Kitko was engaged in the business of operating a wood mill which manufactured, among other things, cabinetry components.

3. Defendant, Daniel J. Carney & Son (hereinafter "Carney"), is a business entity operating and existing under the laws of the Commonwealth of Pennsylvania with a place of business located at 103 Keystone Avenue, Cresson, Pennsylvania.

4. Upon information and belief, at all times relevant hereto, Carney was engaged in the business of installing, assembling, inspecting, and servicing commercial water treatment systems.

5. At some time in October of 1994, plaintiff contracted with defendant for the installation of a new water treatment system for use in its production process at its facility located in Glen Hope, Pennsylvania (hereinafter "the premises").

6. Defendant performed the work and installed a water treatment system made up of a Model 9000 Fleck Twin Valve mounted on two large fiberglass tanks at the premises.

7. After the installation, plaintiff relied on the expertise of defendant and dealt exclusively with defendant for service of said system and supply of the appropriate filtering agents.

8. Plaintiff utilized the water treatment system in its commercial process to condition various types of wood with steam.

9. On or about September 4, 2000, plaintiff discovered that a significant amount of its wood product had been stained by iron residue or rust.

10. Plaintiff's investigation to date has determined that the failure of the water treatment system allowed for mineral residue to enter the commercial steaming system and damage the wood being conditioned.

11. As a direct and proximate result of the water treatment system failure, plaintiff sustained damage to its wood product, incurred additional expenses and incurred other incidental, compensatory, and consequential damages in an amount in excess of \$290,000.00. for which defendant is liable.

COUNT I

KITKO WOOD PRODUCTS, INC.
v.
DANIEL J. CARNEY & SON

NEGLIGENCE

12. Plaintiff incorporates by reference paragraphs 1 through 11 above, as if the same were set forth at length herein.

13. The occurrence and subsequent damages as described herein were the proximate result of the negligent, careless, and/or reckless acts and/or omissions of defendant Carney, by and through its employees, agents, and/or workmen in:

- (a) Failing to exercise due diligence, skill, and good judgment before performing its services and in performing its services;
- (b) failing to take appropriate and proper measures to protect plaintiff's property from mineral staining damage;
- (c) failing to properly install, assemble, and/or monitor the installation of the water treatment system in the premises;
- (d) failing to properly install the water treatment system;
- (e) failing to properly supply the water treatment system at the premises with appropriate filtering salts for the known water conditions;
- (f) failing to properly install the water treatment system to avoid back pressure in the system;
- (g) failing to note improper outlet pipe diameter creating an imbalance in the operation of the water treatment system;
- (h) failing to properly test the water treatment system after its installation;
- (i) failing to perform in a good and workmanlike manner and by failing to exercise reasonable care in performing installation and/or assembly work at the premises;
- (j) failing to comply with the proper and appropriate industry standards and practices; and
- (k) otherwise failing to exercise due care in providing its installation, servicing and/or assembly services.

14. As a direct and proximate result of the aforesaid conduct of defendant Carney, plaintiff sustained damage to their wood product in an amount in excess of \$290,000.00.

WHEREFORE, plaintiff Kitko Wood Products, Inc. demands judgment against defendant Daniel J. Carney & Son in an amount in excess of \$290,000.00, together with

interest, costs, attorneys' fees, delay damages, and all other relief deemed appropriate by this Court.

COUNT II

KITKO WOOD PRODUCTS, INC.
v.
DANIEL J. CARNEY & SON

BREACH OF CONTRACT

15. Plaintiff incorporates by reference paragraphs 1 through 14 above, as if the same were set forth at length herein.

16. Pursuant to the aforementioned oral and/or written contracts or agreements, defendant Carney was contractually obligated to perform its work, including, but not limited to, its installation, assembly, and servicing of the water treatment system at the premises in a safe, proper, and workmanlike manner.

17. Defendant Carney, by its aforesaid conduct, failed to fulfill and otherwise violated its contractual obligations.

18. The aforesaid failure of defendant Carney to fulfill its contractual obligations was a direct and proximate cause of the occurrence and resulting damage to plaintiff.

19. As a direct and proximate result of the aforesaid breach of defendant Carney, plaintiff sustained damage to its property in an amount in excess of \$290,000.00.

WHEREFORE, plaintiff Kitko Wood Products, Inc. demands judgment against defendant Daniel J. Carney & Son in an amount in excess of \$290,000.00, together with interest, costs, attorneys' fees, delay damages, and all other relief deemed appropriate by this Court.

COUNT III

KITKO WOOD PRODUCTS, INC.

v.

DANIEL J. CARNEY & SON

BREACH OF WARRANTY

20. Plaintiff incorporates by reference paragraphs 1 through 19 above, as if the same were set forth at length herein.

21. At all times material hereto, plaintiff as direct beneficiary of defendant Carney's work, relied upon the expertise and experience of Carney to properly furnish and perform the appropriate installation, assembly, and servicing of the water treatment system at the premises.

22. In undertaking the duty to furnish and perform the aforesaid work at the premises, defendant Carney impliedly and expressly warranted that it would perform the aforesaid work and services in a good, safe, and workmanlike manner.

23. Defendant Carney, by its aforesaid conduct, breached its express and implied warranties, and such breaches were the cause of the occurrence and damage to plaintiff.

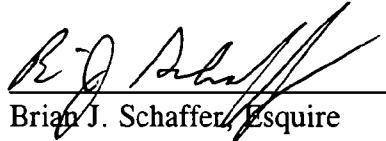
24. As a direct and proximate result of defendant's breach of said express and implied warranties, plaintiff sustained damage to its property, incurred additional expenses and incurred other incidental, compensatory, and consequential damages in an amount in excess of \$290,000.00 for which defendant Carney is liable.

WHEREFORE, plaintiff Kitko Wood Products, Inc. demands judgment against defendant Daniel J. Carney & Son in an amount in excess of \$290,000.00, together with interest, costs, attorneys' fees, delay damages, and all other relief deemed appropriate by this Court.

Respectfully submitted,

WHITE AND WILLIAMS LLP

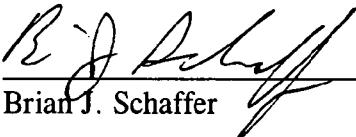
BY:



Brian J. Schaffer, Esquire
Attorney for Plaintiff,
Kitko Wood Products, Inc.

ATTORNEY VERIFICATION

I, Brian J. Schaffer, Esquire, counsel for plaintiff, do hereby verify I have reviewed the averments contained in the foregoing Complaint and find them to be true and correct to the best of my knowledge, information and belief. I understand that this statement is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



Brian J. Schaffer

Dated: 8/27/02

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

KITKO WOOD PRODUCTS, INC.

CIVIL ACTION - LAW

Plaintiff,

Number 02 - 1343 C.D.

vs.

Type of Case: Civil Division

DANIEL J. CARNEY & SON

Type of Pleading: Appearance

Defendant.

Filed on behalf of: Defendant

Counsel of Record for this Party:

Troy J. Harper
Supreme Court Number: 74753

John C. Dennison, II
Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED

SEP 19 2002

William A. Shaw
Prothonotary

KITKO WOOD PRODUCTS, INC.

Plaintiff,

vs.

DANIEL J. CARNEY & SON

Defendant.

- * In the Court of Common Pleas of
- * Clearfield County, Pennsylvania
- *
- * Civil Action - Law
- *
- *
- *
- *
- * Number 02 - 1343 C.D.

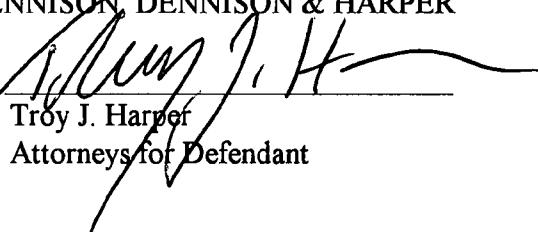
APPEARANCE

TO THE PROTHONOTARY OF CLEARFIELD COUNTY:

Please enter our Appearance on behalf of the Defendant, DANIEL J. CARNEY & SON, in regard to the above entitled matter.

DENNISON DENNISON & HARPER

By


Troy J. Harper
Attorneys for Defendant

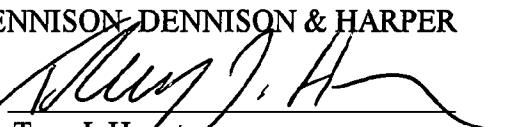
Dated: 9/18/02

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Appearance was served on the
18th day of September, 2002, by United States Mail, First Class,
Postage Prepaid, addressed to the following:

Brian J. Schaffer, Esq.
White & Williams, LLP
1800 Liberty Place
Philadelphia, Pennsylvania 19103

DENNISON DENNISON & HARPER

By 

Troy J. Harper
Attorneys for the Defendant

FILED
SEP 19 2002
11:10 AM
cc

William A. Shaw
Prothonotary

DENNISON, DENNISON & HARPER
ATTORNEYS AT LAW
293 MAIN STREET
BROOKVILLE, PENNSYLVANIA 15825

WHITE AND WILLIAMS LLP

BY: Brian J. Schaffer, Esquire
Identification No.: 79292
1800 One Liberty Place
Philadelphia, PA 19103-7395
(215) 864-7000

Attorney for Plaintiff

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ROUTE 53
P.O. BOX 3
GLEN HOPE, PA 16445

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

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DANIEL J. CARNEY & SON
103 KEYSTONE AVENUE
CRESSON, PA 16630

NO. 02-1343 C.D.

JURY TRIAL DEMANDED

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LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

PENNSYLVANIA LAWYER REFERRAL SERVICE

Telephone: (800) 692-7375

FILED

OCT 15 2002

William A. Shaw
Prothonotary

WHITE AND WILLIAMS LLP
BY: Brian J. Schaffer, Esquire
Identification No.: 79292
1800 One Liberty Place
Philadelphia, PA 19103-7395
(215) 864-7000

Attorney for Plaintiff

KITKO WOOD PRODUCTS, INC.	:	COURT OF COMMON PLEAS
	:	CLEARFIELD COUNTY
	:	
v.	:	
	:	
DANIEL J. CARNEY & SON	:	NO. 02-1343 C.D.
	:	
	:	JURY TRIAL DEMANDED
	:	

FIRST AMENDED COMPLAINT

1. Plaintiff, Kitko Wood Products, Inc. (hereinafter "Kitko"), is a Pennsylvania corporation duly operating and existing under the laws of the Commonwealth of Pennsylvania with a place of business located at Route 53, Glen Hope, Pennsylvania.
2. At all times relevant hereto, Kitko was engaged in the business of operating a wood mill which manufactured, among other things, cabinetry components.
3. Defendant, Daniel J. Carney & Son (hereinafter "Carney"), is a business entity operating and existing under the laws of the Commonwealth of Pennsylvania with a place of business located at 103 Keystone Avenue, Cresson, Pennsylvania.
4. Upon information and belief, at all times relevant hereto, Carney was engaged in the business of installing, assembling, inspecting, and servicing commercial water treatment systems.
5. At some time in October of 1994, plaintiff contracted with defendant for the

installation of a new water treatment system for use in its production process at its facility located in Glen Hope, Pennsylvania (hereinafter "the premises). A true and correct copy of the contract documents are attached hereto and marked as Exhibit "A".

6. Defendant performed the work and installed a water treatment system made up of a Model 9000 Fleck Twin Valve mounted on two large fiberglass tanks at the premises.

7. After the installation, plaintiff relied on the expertise of defendant and dealt exclusively with defendant for service of said system and supply of the appropriate filtering agents.

8. Plaintiff utilized the water treatment system in its commercial process to condition various types of wood with steam.

9. On or about September 4, 2000, plaintiff discovered that a significant amount of its wood product had been stained by iron residue or rust.

10. Plaintiff's investigation to date has determined that the failure of the water treatment system allowed for mineral residue to enter the commercial steaming system and damage the wood being conditioned.

11. As a direct and proximate result of the water treatment system failure, plaintiff sustained damage to its wood product, incurring damages in the amount of \$301,873.00, for which defendant is liable.

COUNT I

KITKO WOOD PRODUCTS, INC.

v.

DANIEL J. CARNEY & SON

NEGLIGENCE

12. Plaintiff incorporates by reference paragraphs 1 through 11 above, as if the same were set forth at length herein.

13. The occurrence and subsequent damages as described herein were the proximate result of the negligent, careless, and/or reckless acts and/or omissions of defendant Carney, by and through its employees, agents, and/or workmen in:

- (a) Failing to exercise due diligence, skill, and good judgment before performing its services and in performing its services;
- (b) failing to take appropriate and proper measures to protect plaintiff's property from mineral staining damage;
- (c) failing to properly install, assemble, and/or monitor the installation of the water treatment system in the premises;
- (d) failing to properly install the water treatment system;
- (e) failing to properly supply the water treatment system at the premises with appropriate filtering salts for the known water conditions;
- (f) failing to properly install the water treatment system to avoid back pressure in the system;
- (g) failing to note improper outlet pipe diameter creating an imbalance in the operation of the water treatment system;
- (h) failing to properly test the water treatment system after its installation;
- (i) failing to perform in a good and workmanlike manner and by failing to exercise reasonable care in performing installation and/or assembly work

at the premises; and

(j) failing to comply with the proper and appropriate industry standards and practices.

14. As a direct and proximate result of the aforesaid conduct of defendant Carney, plaintiff sustained damage to their wood product in the amount of \$301,873.00.

WHEREFORE, plaintiff Kitko Wood Products, Inc. demands judgment against defendant Daniel J. Carney & Son in the amount of \$301,873.00, together with interest, costs and all other relief deemed appropriate by this Court.

COUNT II

KITKO WOOD PRODUCTS, INC.
v.
DANIEL J. CARNEY & SON

BREACH OF CONTRACT

15. Plaintiff incorporates by reference paragraphs 1 through 14 above, as if the same were set forth at length herein.

16. Pursuant to the aforementioned oral and/or written contract or agreement, defendant Carney was contractually obligated to perform its work, including, but not limited to, its installation, assembly, and servicing of the water treatment system at the premises in a safe, proper, and workmanlike manner.

17. Defendant Carney, by its aforesaid conduct, failed to fulfill and otherwise violated its contractual obligations.

18. The aforesaid failure of defendant Carney to fulfill its contractual obligations was a direct and proximate cause of the occurrence and resulting damage to plaintiff.

19. As a direct and proximate result of the aforesaid breach of defendant Carney, plaintiff sustained damage to its property in the amount of \$301,873.00.

WHEREFORE, plaintiff Kitko Wood Products, Inc. demands judgment against defendant Daniel J. Carney & Son in the amount of \$301,873.00, together with interest, costs and all other relief deemed appropriate by this Court.

COUNT III

KITKO WOOD PRODUCTS, INC.

v.

DANIEL J. CARNEY & SON

BREACH OF WARRANTY

20. Plaintiff incorporates by reference paragraphs 1 through 19 above, as if the same were set forth at length herein.

21. At all times material hereto, plaintiff as direct beneficiary of defendant Carney's work, relied upon the expertise and experience of Carney to properly furnish and perform the appropriate installation, assembly, and servicing of the water treatment system at the premises.

22. In undertaking the duty to furnish and perform the aforesaid work at the premises, defendant Carney impliedly warranted that it would perform the aforesaid work and services in a good, safe, and workmanlike manner.

23. Furthermore, by selling and installing the aforesaid water treatment system defendant Carney impliedly warranted that it was of merchantable quality and fit for its particular purpose.

24. Defendant Carney, by its aforesaid conduct, breached its implied warranties,

and such breaches were the cause of the occurrence and damage to plaintiff.

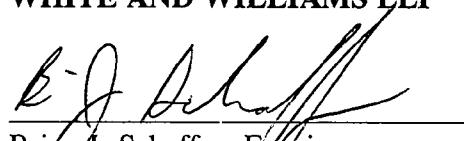
25. As a direct and proximate result of defendant's breach of said implied warranties, plaintiff sustained damage to its property, incurring damages in the amount of \$301,873.00, for which defendant Carney is liable.

WHEREFORE, plaintiff Kitko Wood Products, Inc. demands judgment against defendant Daniel J. Carney & Son in the amount of \$301,873.00, together with interest, costs and all other relief deemed appropriate by this Court.

Respectfully submitted,

WHITE AND WILLIAMS LLP

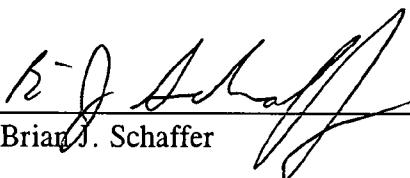
BY:



Brian J. Schaffer, Esquire
Attorney for Plaintiff,
Kitko Wood Products, Inc.

ATTORNEY VERIFICATION

I, Brian J. Schaffer, Esquire, counsel for plaintiff, do hereby verify I have reviewed the averments contained in the foregoing Complaint and find them to be true and correct to the best of my knowledge, information and belief. I understand that this statement is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



Brian J. Schaffer

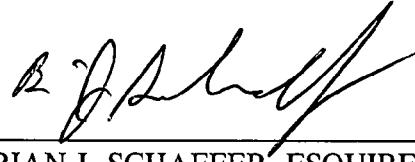
Dated: 10/10/02

CERTIFICATE OF SERVICE

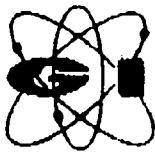
I, BRIAN J. SCHAFER, ESQUIRE, hereby certify that I have served upon the
counsel listed below a true and correct copy of PLAINTIFF'S FIRST AMENDED
COMPLAINT, on October 14, 2002, by first class mail, postage prepaid:

Troy J. Harper, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825

BY:



BRIAN J. SCHAFER, ESQUIRE
Attorney for Plaintiff



DANIEL J. CARNEY & SON

WATER TREATMENT SYSTEMS

GENERAL IONICS DISTRIBUTOR

710 Back Road

Gallitzin, PA 16641

Phone 814-886-2777

KITKU WOOD
PRODUCTS

Toll Free 1-800-498-0777

11-7-94

GLEN HOPE, PA

QUAN.	DESCRIPTION	UNIT COST	TOTAL COST
1	MAREC 9000 FLECK TWIN VALVE MOUNTED ON TWO 10X44 TANKS 30,000 GRAIN CAP EACH INSTALLATION INCLUDED		
	TOTAL PRICE		3200.00
	DOWN PAYMENT		
	CK # 93311 10-28-94	1000.00	
	PAYMENT IN FULL 11-7-94		
	CK # 93487	2200.00	
	TOTAL PAID	3200.00	

March 21, 1994

Kitko Wood Products, Inc.
Glen Hope, PA

Water Softening System for Boiler.

Water Analysis:

Hardness	9 gpm
pH	6.7
Iron	0
Mn	0
TDS	180

Equipment Needed:

Model 9000 Fleck Twin Valve (3/4" inlet & outlet) mounted on
two 10" x 44" Fiberglass Tanks (30,000 grain capacity per tank)

Demand Regeneration
1 Brine Tank 18" x 33"

Price to be: \$3200.00 \$2200.00 PA 1 in #11
PA Tax: 192.00 #93497
Total: \$3392.00 \$1000 down

10-28-94 #93311

Price includes installation and all materials necessary to complete
job plus 3 bags of Dura Cube salt.

Terms: 1/3 down, with balance due on completion of installation.
Price good for 30 days.

FILED

NO
cc
M 14 BX
OCT 15 2002
6:00
FJD

William A. Shaw
Prothonotary

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

KITKO WOOD PRODUCTS, INC.

CIVIL ACTION - LAW

Plaintiff,

Number 02 - 1343 C.D.

vs.

DANIEL J. CARNEY & SON

Type of Case: Civil Division

Defendant.

Type of Pleading: Preliminary Objections

Filed on behalf of: Defendant

Counsel of Record for this Party:

Troy J. Harper
Supreme Court Number: 74753

John C. Dennison, II
Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED

SEP 23 2002

William A. Shaw
Prothonotary

Donald Gump
Paul, Bill, and
the Hounds.

KITKO WOOD PRODUCTS, INC.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
*
* Civil Action - Law
*
*
*
* Number 02 - 1343 C.D.

Plaintiff,

vs.

DANIEL J. CARNEY & SON

Defendant.

PRELIMINARY OBJECTIONS

AND NOW, comes the Defendant, DANIEL J. CARNEY & SON, by its attorneys, Dennison, Dennison & Harper, who file the following Preliminary Objections to the Plaintiff's Complaint:

1. A Complaint in the present matter was filed on or about August 28, 2002.
2. The Complaint alleges that the Defendant sold the Plaintiff a water treatment system in 1994 and that on September 4, 2000, the Plaintiff noticed that its wood product was stained by iron residue.
3. The Plaintiff's complaint alleges that the wood product was stained due to the water treatment system not working properly.
4. The Plaintiff's Complaint seeks damages from the Defendant related to the damage arising from the wood product being stained and sets forth a count based on a breach of contract theory, a count based on negligence and a count based on breach of warranty.

I. MOTION TO STRIKE / MOTION FOR MORE SPECIFIC PLEADING

5. The averments of Paragraphs 1 and 4 of these Preliminary Objections are incorporated herein by reference thereto.

6. Pa.R.C.P. 1019(a) provides that the material facts on which a cause of action is based must be stated in concise and summary form.

7. Paragraph 13 of the Plaintiff's Complaint alleges "the occurrence and subsequent damages as described herein were the proximate result of the negligent, careless and/or reckless acts and/or omissions of defendant Carney, by and through its employees, against and/or workman in.".

8. Paragraph 13 of the Plaintiff's Complaint thereafter sets forth subparagraphs (a) through (k) which attempt to set forth specific alleged items of negligent conduct by the Defendant.

9. Subparagraph (a) of Paragraphs 13 of the Plaintiff's Complaint alleges that the Defendant's negligent conduct consisted of "Failing to exercise due diligence, skill and good judgment before performing its services and in performing its services;"

10. Subparagraph (b) of Paragraphs 13 of the Plaintiff's Complaint alleges that the Defendant's negligent conduct consisted of "failing to take appropriate and proper measures to protect plaintiff's property from mineral staining damage;"

11. Subparagraph (c) of Paragraphs 13 of the Plaintiff's Complaint alleges that the Defendant's negligent conduct consisted of "failing to properly install, assemble and/or monitor the installation of the water treatment system on the premises;"

12. Subparagraph (d) of Paragraphs 13 of the Plaintiff's Complaint alleges that the Defendant's negligent conduct consisted of "failing to properly install the water treatment system;"

13. Subparagraph (i) of Paragraphs 13 of the Plaintiff's Complaint alleges that the Defendant's negligent conduct consisted of "failing to perform in a good and workmanlike manner and by failing to exercise reasonable care in performing installation and/or assembly work at the premises;"

14. Subparagraph (j) of Paragraphs 13 of the Plaintiff's Complaint alleges that the Defendant's negligent conduct consisted of "failing to comply with proper and appropriate industry standards and practices; and"

15. Subparagraph (k) of Paragraphs 13 of the Plaintiff's Complaint alleges that the Defendant's negligent conduct consisted of "otherwise failing to exercise due care in providing its installation, servicing and/or assembly services."

16. The averments of subparagraphs (a), (b), (c), (d), (i), (j) and (k) of Paragraphs 13 of the Plaintiff's Complaint are no more than general averments of alleged negligence that contain no specific averments of alleged negligent conduct and which are vague and lack sufficient specificity to apprise the Defendant, Daniel J. Carney & Son, of all of the issues to be litigated. Connor v. Allegheny General Hosp., 501 Pa. 306, 461 A.2d 600 (1983).

WHEREFORE, the Defendant, Daniel J. Carney & Son, respectfully requests that the Court order the Plaintiff to amend its Complaint to include a more specific pleading relating to the general averments contained in subparagraphs (a), (b), (c), (d), (i), (j) and (k) of Paragraph 13, in

the alternative, that subparagraphs (a), (b), (c), (d), (i), (j) and (k) of Paragraph 13 be stricken from the Complaint.

II. MOTION TO STRIKE THE COMPLAINT FOR LACK OF COMPLAINT TO CONFORM TO LAW OR RULE OF COURT PURSUANT TO Pa.R.C.P. 1028(a)(2)

17. The averments of Paragraphs 1 and 4 of these Preliminary Objections are incorporated herein by reference thereto.

18. Pa.R.C.P. 1019(h) provides that "When any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written.

19. Pa.R.C.P. 1019(i) thereafter provides that "When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof..."

20. Paragraph 5 of the Plaintiffs' Complaint alleges that the Plaintiff contracted with the Defendant for the installation of a new water treatment system.

21. Paragraph 16 contained within Count II -Breach of Contract of the Plaintiff's Complaint alleges that "Pursuant to the aforementioned oral and/or written contracts or agreement, defendant Carney was contractually obligated to perform its work, including but not limited to, its installation, assembly, and servicing of the water treatment system at the premises in a safe, proper and workmanlike manner."

22. Although the Plaintiffs' Complaint references alleged written contracts or agreements, said Complaint fails to have attached thereto any of said contracts or agreements in violation of Pa.R.C.P. 1019(i).

23. Count III of the Plaintiff's Complaint attempts to set forth a cause of action based on a theory of breach of express and implied warranties.

24. Count III fails to state with any particularity whether the alleged warranties were written or oral in violation Pa.R.C.P. 1019(h) and, further, if said warranties are alleged to have been based on some writing the failure to attach the alleged agreement or contract is in violation of Pa.R.C.P. 1019(i).

WHEREFORE, the Defendant, Daniel J. Carney & Son, respectfully requests that the Court enter an Order striking the Plaintiff's Complaint and dismissing the same.

III. DEMURRER

25. The averments of Paragraphs 1 and 4 of these Preliminary Objections are incorporated herein by reference thereto.

26. The "Wherefore" clause contained in Count I, II and III of the Plaintiffs' Complaint makes a request for an award of attorneys fees.

27. The Plaintiff's Complaint fails to allege a claim or cause of action which is sufficient to sustain a claim for attorneys fees as part of an award.

WHEREFORE, Defendant, Daniel J. Carney & Son, requests this Honorable Court to grant a Demurrer and dismiss the Plaintiff's claim for attorney's fees in Count I, II and III.

IV. MOTION FOR MORE SPECIFIC PLEADING OR MOTION TO STRIKE

28. The averments of Paragraphs 1 and 4 of these Preliminary Objections are

incorporated herein by reference thereto.

29. Pa.R.C.P. 1019 (f) requires that "averments of time, place and items of special damage shall be specifically stated."

30. Paragraph 11 of the Plaintiff's Complaint alleges "As a direct and proximate result of the water treatment system failure, plaintiff sustained damage to its wood product, incurred additional expenses and incurred other incidental, compensatory, and consequential damages in excess of \$290,000.00 for which the defendant is liable."

31. The Plaintiff's Complaint then makes reference to the \$290,000.00 damage figure throughout the various counts of the Complaint.

32. Paragraph 11 of the Plaintiff's Complaint fails to separate out the specific amounts claimed with regard to each item of special damages alleged within Paragraph 11.

33. Paragraph 11 also fails to allege with any specifically what compromises the "additional expenses" or the "incidental, compensatory or consequential damages".

34. By failing to provide a specific breakdown of the amount of each item of alleged specific damage and failing to specify what the alleged specific damages are comprised of, Paragraph 11 of the Plaintiff's Complaint fails to comply with Pa.R.C.P. 1019(f).

WHEREFORE, Defendant, Daniel J. Carney & Son, respectfully requests that the Court order the Plaintiff to amend its Complaint to more specifically plead the averments of Paragraphs 11, or in the alternative, that Paragraph 11 be stricken from the Complaint.

V. MOTION TO STRIKE THE COMPLAINT FOR LACK OF COMPLAINT TO CONFORM TO LAW OR RULE OF COURT PURSUANT TO PA.R.C.P. 1028(a)(2)

35. The averments of Paragraphs 1 and 4 of these Preliminary Objections are incorporated herein by reference thereto.

36. Pa.R.C.P. 1024(c) requires that a pleading containing any averment of fact requires a signed verification which shall be made by the party filing the pleading unless the party lacks specific knowledge or information or is outside the jurisdiction of the court and the verification of the pleading cannot be obtained within the time allowed for filing the pleading.

37. The Plaintiff's Complaint fails to contain a verification executed by the Plaintiff. On the contrary, it contains a verification executed by counsel for the Plaintiff.

38. The verification attached to the Plaintiff's Complaint fails to comply with Pa.R.C.P. 1024(c).

WHEREFORE, the Defendant, Daniel J. Carney & Son, respectfully requests that the Court enter an Order Striking the Plaintiff's Complaint and dismissing the same.

DENNISON, DENNISON & HARPER

By

Troy J. Harper
Attorneys for Defendant

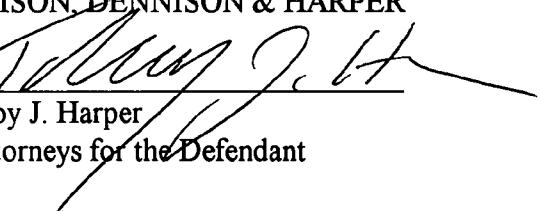
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Preliminary Objections were served on the 20th day of September, 2002, by United States Mail, First Class, Postage Prepaid, addressed to the following:

Brian J. Schaffer, Esq.
White & Williams, LLP
1800 Liberty Place
Philadelphia, Pennsylvania 19103

DENNISON, DENNISON & HARPER

By


Troy J. Harper
Attorneys for the Defendant

FILED
M 11:17 AM
SEP 23 2002
CC

William A. Shaw
Prothonotary

JA

DENNISON, DENNISON & HARPER
ATTORNEYS AT LAW
293 MAIN STREET
BROOKVILLE, PENNSYLVANIA 15825

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12974

KITKO WOOD PRODUCTS, INC.

02-1343-CD

VS.

DANIEL J. CARNEY & SON

COMPLAINT

SHERIFF RETURNS

NOW AUGUST 29, 2002 BOB KOLAR, SHERIFF OF CAMBRIA COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHINCOMPLAINT ON DANIEL J. CARNEY & SON, DEFENDANT.

NOW SEPTEMBER 3, 2002 SERVED THE WITHIN COMPLAINT ON DANIEL J. CARNEY & SON, DEFENDANT BY DEPUTIZING THE SHERIFF OF CAMBRIA COUNTY. THE RETURN OF SHERIFF KOLAR IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED SHIRLEY KING, P.I.C.

Return Costs

Cost	Description
27.97	SHFF. HAWKINS PAID BY; ATTY.
26.48	SHFF. KOLAR PAID BY: ATTY.
10.00	SURCHARGE PAID BY; ATTY

FILED
01/30/08 8:11
NOV 13 2002 *gma*

William A. Shaw
Prothonotary

Sworn to Before Me This

13rd Day Of November 2002
Will Sharrow

~~My~~ Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

*Chester Hawkins
by Marlyn Harris*
Chester A. Hawkins
Sheriff

CASE # PLAINTIFF
90270-02 KITKO WOOD PRODUCTS INC.
DATE 9/03/02

DEFENDANT
CARNEY, DANIEL & SON 02-1343

AT 2:35 HRS. SERVED THE COMPLAINT WITH NOTICE TO DEFEND UPON DNILE J. CARNEY AND SON BY HANDING A TRUE AND ATTESTED COPY THEREOF TO SHIRLEY KING, SHE BEING THE PERSON IN CHARGE AT 103 KEYSTONE AVE. CRESSON, PA. AND MAKING CONTENTS THEREOF KNOWN TO HER. MY COSTS PAID BY ATTORNEY FOR PLAINTIFF.

SHERIFF COSTS 23.48
PRO 3.00
TOTAL COSTS 26.48

SO ANSWERS,

Bob Kolar

BOB KOLAR, SHERIFF

SWORN AND SUBSCRIBED TO BEFORE ME THIS 5TH DAY OF SEPT. 02.
PROTHONATARY *Patricia Burkhardt*

C A M B R I A C O U N T Y

卷之三

9/05/02

WHITE & WILLIAMS
1800 ONE LIBERTY PLACE
PHILADELPHIA

BOB KOLAR, SHERIFF
CAMBRIA COUNTY
BENNSYLVANIA

STATEMENT

BOB KOLAR, SHERIFF SHERIFF, CAMBRIA COUNTY, PA	CIVIL REC & DOCKETING & R CIVIL SERVICE GENERAL MILEAGE PROTHONOTARY NOTARY REFUND ON DOCKET	9.00 9.00 5.48 3.00 73.52
KITKO WOOD PRODUCTS INC. 90270-02	 	
COMPLAINT - KITKO WOOD VS. CARNEY & KITKO WOOD PRODUCTS INC.	 	

V S
CARNEY, DANIEL & SON 02-1343

WHITE & WILLIAMS
1800 ONE LIBERTY PLACE

PHILADEPHIA, PA 19103

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

WHITE AND WILLIAMS LLP CERTIFICATE OF SERVICE

BY: Brian J. Schaffer, Esquire

Attorney for Plaintiff

Identification No.: 79292

1800 One Liberty Place, hereby certify that I have served upon the counsel listed below in Philadelphia, PA 19103-7395

(215) 864-7064 copy of the PRAECIPE TO SUBSTITUTE VERIFICATION on February 27,

KITKOWOOD PRODUCTS, INC:epaid

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

v.

Troy J. Harper, Esquire NO. 02-1343 C.D.

DANIEL J. CARNEY & SON Dennison, Dennison & Harper

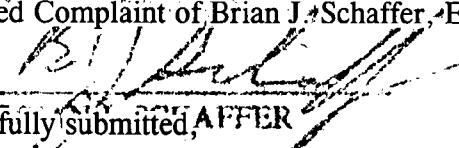
203 Main Street

Brookville, PA 15825 JURY TRIAL DEMANDED

PRAECIPE TO SUBSTITUTE VERIFICATION

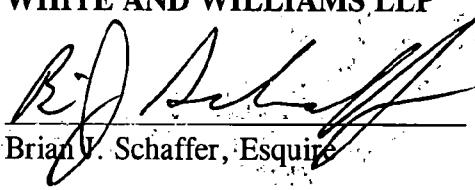
TO THE PROTHONOTARY:

Please substitute the attached Verification of Robert McManus for that of the previously filed attorney verification to plaintiff's First Amended Complaint of Brian J. Schaffer, Esquire.


Respectfully submitted, AFFER

WHITE AND WILLIAMS LLP

BY:


Brian J. Schaffer, Esquire

Dated: 2/27/03

FILED

MAR 03 2003

William A. Shaw
Prothonotary

WHITE AND WILLIAMS LLP
BY: Brian J. Schaffer, Esquire
Identification No.: 79292
1800 One Liberty Place
Philadelphia, PA 19103-7395
(215) 864-7064

Attorney for Plaintiff

KITKO WOOD PRODUCTS, INC.	:	COURT OF COMMON PLEAS
	:	CLEARFIELD COUNTY
	:	
v.	:	
	:	NO. 02-1343 C.D.
DANIEL J. CARNEY & SON	:	
	:	
	:	JURY TRIAL DEMANDED
	:	

PRAECIPE TO SUBSTITUTE VERIFICATION

TO THE PROTHONOTARY:

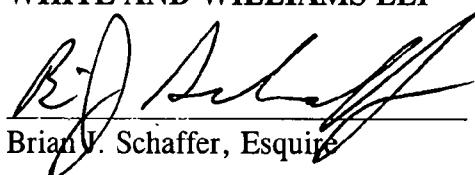
Please substitute the attached Verification of Robert McManus for that of the previously filed attorney verification to plaintiff's First Amended Complaint of Brian J. Schaffer, Esquire.

Respectfully submitted,

WHITE AND WILLIAMS LLP

BY:

Brian J. Schaffer, Esquire



Dated: 2/27/03

FILED

MAR 03 2003

William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

I, Brian J. Schaffer, hereby certify that I have served upon the counsel listed below a true and correct copy of the PRAECIPE TO SUBSTITUTE VERIFICATION on February 27, 2003, by first class mail, postage prepaid:

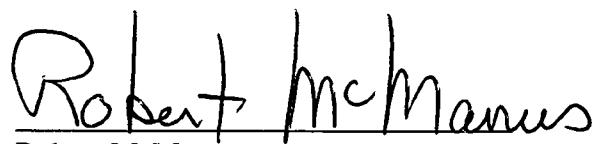
Troy J. Harper, Esquire
Dennison, Dennison & Harper
293 Main Street
Brookville, PA 15825-1291



Brian J. Schaffer

VERIFICATION

I, Robert McManus, do hereby verify that I am authorized to make this verification on behalf of Pennsylvania Lumberman's Mutual Insurance Company, the insurer of plaintiff Kitko Wood Products, Inc. I have reviewed the averments contained in the foregoing Complaint and find them to be true and correct to the best of my knowledge, information and belief. To the extent that any of the statements are based upon an understanding or application of law, I have relied upon counsel in making this verification. I understand that this statement is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.


Robert McManus

Date: 21.11.03

FILED

NO
CC

MR 03 2003

6/1
KAT

William A. Shaw
Prosthemetary

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

KITKO WOOD PRODUCTS, INC.,

CIVIL ACTION - LAW

Plaintiff,

Number 02 - 1343 C.D.

vs.

Type of Case: Civil Division

DANIEL J. CARNEY & SON,

Type of Pleading: Answer and New Matter

Defendant.

Filed on behalf of: Defendant

Counsel of Record for this Party:

Troy J. Harper
Supreme Court Number: 74753

John C. Dennison, II
Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED

MAR 17 2003

William A. Shaw
Prothonotary

KITKO WOOD PRODUCTS, INC.

Plaintiff,

vs.

DANIEL J. CARNEY & SON

Defendant.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
*
* Civil Action - Law
*
*
*
* Number 02 - 1343 C.D.

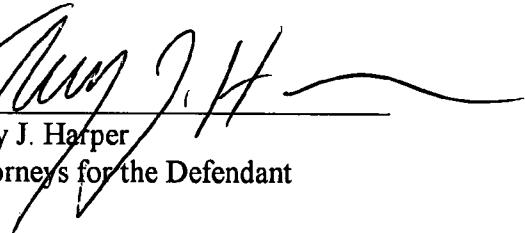
NOTICE TO PLEAD

TO: KITKO WOOD PRODUCTS, INC.:

You are hereby notified to plead to the within New Matter within twenty (20) days from service hereof or a default judgment may be entered against you.

DENNISON, DENNISON & HARPER

By


Troy J. Harper
Attorneys for the Defendant

KITKO WOOD PRODUCTS, INC.,

* In the Court of Common Pleas of

* Clearfield County, Pennsylvania

*

* Civil Action - Law

*

*

*

*

* Number 02 - 1343 C.D.

Plaintiff,

vs.

DANIEL J. CARNEY & SON,

Defendant.

ANSWER AND NEW MATTER

AND NOW, comes the Defendant, DANIEL J. CARNEY & SON, by its attorneys, Dennison, Dennison & Harper, who file the following Answer and New Matter:

1. Admitted.
2. The averments of Paragraph 2 of the Plaintiff's Amended Complaint are admitted insofar as Kitko was in the business of operating a wood mill. With respect to the remaining averments of Paragraph 2 of the Plaintiff's Amended Complaint, after reasonable investigation, the Defendant, Daniel J. Carney & Son, is without sufficient knowledge and information to form a belief as to the truth of the averments, and said averments are therefore denied.
3. Denied as stated. On the contrary, Defendant Daniel J. Carney & Son is a trade name for a sole proprietorship owned by Daniel J. Carney, with a place of business located at 103 Keystone Avenue, Cresson, Pennsylvania.
4. Admitted. By way of additional response, the averments of Paragraph 3 of this Answer are incorporated herein by reference thereto.

5. Denied as stated. On March 21, 1994, the Defendant, Daniel J. Carney & Son, made a proposal to the Plaintiff for the installation of a water softening system for the Plaintiff's boiler at the Plaintiff's Glen Hope, Pennsylvania facility. Thereafter, the Plaintiff accepted the proposal, and said water softening system was installed sometime in October and/or November of 1994. The documents attached to the Plaintiff's Amended Complaint speak for themselves, and no further response is required. By way of additional response, the averments of Paragraph 3 of this Answer are incorporated herein by reference thereto.

6. Admitted. By way of additional response, the averments of Paragraph 3 of this Answer are incorporated herein by reference thereto.

7. After reasonable investigation, the Defendant, Daniel J. Carney & Son, is without sufficient knowledge and information to form a belief as to the truth of the averments of Paragraph 7 of the Plaintiff's Amended Complaint, and said averments are therefore denied. By way of additional response, the averments of Paragraph 5 of this Answer are incorporated herein by reference thereto.

8. The averments of Paragraph 8 of the Plaintiff's Amended Complaint are admitted only insofar as it is believed that water passing through the water softening system was used in the Plaintiff's operations. With respect to the remaining averments of Paragraph 8 of the Plaintiff's Amended Complaint, after reasonable investigation, the Defendant, Daniel J. Carney & Son, is without sufficient knowledge and information to form a belief as to the truth of the averments, and said averments are therefore denied.

9. After reasonable investigation, the Defendant, Daniel J. Carney & Son, is without sufficient knowledge and information to form a belief as to the truth of the averments of Paragraph 9 of the Plaintiff's Amended Complaint, and said averments are therefore denied.

10. The averments of Paragraph 10 of the Plaintiff's Amended Complaint are denied pursuant to Pa.R.C.P. 1029(e).

11. With respect to the averments of Paragraph 11 of the Plaintiff's Amended Complaint alleging any failure of the water softening system, said averments are denied pursuant to Pa.R.C.P. 1029(e). With respect to the remaining averments of Paragraph 11 of the Plaintiff's Amended Complaint, after reasonable investigation, the Defendant, Daniel J. Carney & Son, is without sufficient knowledge and information to form a belief as to the truth of the averments, and said averments are therefore denied.

COUNT I

KITKO WOOD PRODUCTS, INC.
V.
DANIEL J. CARNEY & SON

NEGLIGENCE

12. Paragraph 12 of the Plaintiff's Amended Complaint fails to contain any averments of facts and is merely an incorporation clause and, as such, no response is required. To the extent any response is deemed required, the averments of Paragraphs 1 through 11 of this Answer are incorporated herein by reference thereto.

13. With respect to the averments of Paragraph 13 of the Plaintiff's Amended Complaint alleging any occurrence or damage, after reasonable investigation, the Defendant, Daniel J.

Carney & Son, is without sufficient knowledge and information to form a belief as to the truth of the averments, and said averments are therefore denied. With respect to the remaining averments of Paragraph 13 of the Plaintiff's Amended Complaint and subparagraphs (a) through (j) thereof, said averments are denied pursuant to Pa.R.C.P. 1029(e). By way of additional response, the averments of Paragraph 3 of this Answer are incorporated herein by reference thereto.

14. With respect to the averments of Paragraph 14 of the Plaintiff's Amended Complaint alleging any negligent conduct by the Defendant, said averments are denied pursuant to Pa.R.C.P. 1029(e). With respect to the remaining averments of Paragraph 14 of the Plaintiff's Amended Complaint, after reasonable investigation, the Defendant, Daniel J. Carney & Son, is without sufficient knowledge and information to form a belief as to the truth of the averments, and said averments are therefore denied. By way of additional response, the averments of Paragraph 3 of this Answer are incorporated herein by reference thereto.

WHEREFORE, the Defendant, Daniel J. Carney & Son, demands judgment in its favor and against the Plaintiff.

COUNT II

KITKO WOOD PRODUCTS, INC.
V.
DANIEL J. CARNEY & SON

BREACH OF CONTRACT

15. Paragraph 15 of the Plaintiff's Amended Complaint fails to contain any averments of facts and is merely an incorporation clause and, as such, no response is required. To the extent a

any response is deemed required, the averments of Paragraphs 1 through 14 of this Answer are incorporated herein by reference thereto.

16. The averments of Paragraph 16 that there was an oral or written contract for the servicing of the water softening system are denied. On the contrary, there was no contract for servicing the water softening system. With respect to the remaining averments of Paragraph 16 of the Plaintiff's Amended Complaint, said averments constitute conclusions of law, and no further response is required. By way of additional response, the averments of Paragraphs 1-15 of this Answer are incorporated herein by reference thereto.

17. The averments of Paragraph 17 of the Plaintiff's Amended Complaint are denied pursuant to Pa.R.C.P. 1029(e). By way of additional response, the averments of Paragraphs 3 and 16 of this Answer are incorporated herein by reference thereto.

18. With respect to the averments of Paragraph 18 of the Plaintiff's Amended Complaint alleging any occurrence or damage, after reasonable investigation, the Defendant, Daniel J. Carney & Son, is without sufficient knowledge and information to form a belief as to the truth of the averments, and said averments are therefore denied. With respect to the remaining averments of Paragraph 18 of the Plaintiff's Amended Complaint, said averments are denied pursuant to Pa.R.C.P. 1029(e). By way of additional response, the averments of Paragraph 3 of this Answer are incorporated herein by reference thereto.

19. With respect to the averments of Paragraph 19 of the Plaintiff's Amended Complaint alleging any damage, after reasonable investigation, the Defendant, Daniel J. Carney & Son, is without sufficient knowledge and information to form a belief as to the truth of the averments,

and said averments are therefore denied. With respect to the remaining averments of Paragraph 19 of the Plaintiff's Amended Complaint, said averments are denied pursuant to Pa.R.C.P. 1029(e). By way of additional response, the averments of Paragraph 3 of this Answer are incorporated herein by reference thereto.

WHEREFORE, the Defendant, Daniel J. Carney & Son, demands judgment in its favor and against the Plaintiff.

COUNT III

KITKO WOOD PRODUCTS, INC.
v.
DANIEL J. CARNEY & SON

BREACH OF WARRANTY

20. Paragraph 20 of the Plaintiff's Amended Complaint fails to contain any averments of facts and is merely an incorporation clause and, as such, no response is required. To the extent any response is deemed required, the averments of Paragraphs 1 through 19 of this Answer are incorporated herein by reference thereto.

21. The averments of Paragraph 21 of the Plaintiff's Complaint are denied pursuant to Pa.R.C.P. 1029(e), and the averments of Paragraphs 1-16 of this Answer are incorporated herein by reference thereto.

22. The averments of Paragraph 22 of the Plaintiff's Complaint constitute conclusions of law, and no further response is required. To the extent any further response is deemed required, said averments are denied pursuant to Pa.R.C.P. 1029(e), and the averments of Paragraphs 1-16 of this Answer are incorporated herein by reference thereto.

23. The averments of Paragraph 23 of the Plaintiff's Complaint constitute conclusions of law, and no further response is required. To the extent any further response is deemed required, said averments are denied pursuant to Pa.R.C.P. 1029(e), and the averments of Paragraphs 1-16 of this Answer are incorporated herein by reference thereto.

24. With respect to the averments of Paragraph 24 of the Plaintiff's Amended Complaint alleging any occurrence or damage, after reasonable investigation, the Defendant, Daniel J. Carney & Son, is without sufficient knowledge and information to form a belief as to the truth of the averments, and said averments are therefore denied. The remaining averments of Paragraph 24 of the Plaintiff's Complaint constitute conclusions of law, and no further response is required. To the extent any further response is deemed required, said averments are denied pursuant to Pa.R.C.P. 1029(e), and the averments of Paragraphs 1-16 of this Answer are incorporated herein by reference thereto.

25. With respect to the averments of Paragraph 25 of the Plaintiff's Amended Complaint alleging any damage, after reasonable investigation, the Defendant, Daniel J. Carney & Son, is without sufficient knowledge and information to form a belief as to the truth of the averments, and said averments are therefore denied. The remaining averments of Paragraph 25 of the Plaintiff's Complaint constitute conclusions of law, and no further response is required. To the extent any further response is deemed required, said averments are denied pursuant to Pa.R.C.P. 1029(e), and the averments of Paragraphs 1-16 of this Answer are incorporated herein by reference thereto.

WHEREFORE, the Defendant, Daniel J. Carney & Son, demands judgment in its favor and against the Plaintiff.

NEW MATTER

26. All of the Plaintiff's claims and causes of action are barred by the applicable statutes of limitations.

27. At all times material hereto, the Defendant, Daniel J. Carney & Son, performed all work in a proper and workmanlike manner.

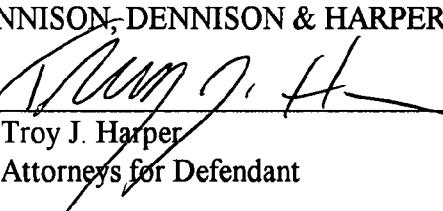
28. The alleged damages sustained by the Plaintiff, without admission of the same, were caused or contributed to, in whole or in part, by persons or entities other than the Defendant, Daniel J. Carney & Son, and over whom the Defendant, Daniel J. Carney & Son, had no control, and for whose actions the Defendant, Daniel J. Carney & Son, is not liable.

29. The Plaintiff has failed to state a cause of action upon which relief may be granted.

WHEREFORE, the Defendant, Daniel J. Carney & Son, demands judgment in its favor and against the Plaintiff.

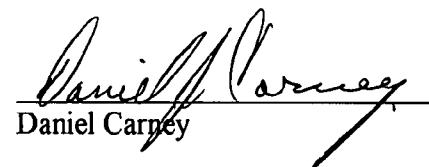
DENNISON, DENNISON & HARPER

By


Troy J. Harper
Attorneys for Defendant

VERIFICATION

I verify that the averments made in the foregoing Answer and New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements herein made are subject to the penalties of 18 Pa.C.S.A. Section 4904, relating to unsworn falsification to authorities.



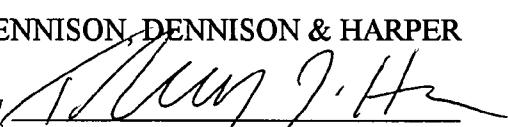
Daniel Carney
Daniel Carney

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Answer and New Matter were served on the 14th day of March, 2003, by United States Mail, First Class, Postage Prepaid, addressed to the following:

Brian J. Schaffer, Esq.
White & Williams, LLP
1800 Liberty Place
Philadelphia, Pennsylvania 19103

DENNISON, DENNISON & HARPER

By 

Troy J. Harper
Attorneys for the Defendant

FILED

NO
CC

MAR 17 2003

RECEIVED
RE

William A. Shaw
Prothonotary

DENNISON, DENNISON & HARPER

ATTORNEYS AT LAW

293 MAIN STREET

BROOKVILLE, PENNSYLVANIA 15825

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

KITKO WOOD PRODUCTS, INC.,

CIVIL ACTION - LAW

Plaintiff,

NO. 02-1343 C.D.

v.

Type of Case: Civil Division

DANIEL J. CARNEY & SON,

Type of Pleading: Reply to New Matter

Defendant.

Filed on behalf of: Plaintiff

Counsel of Record for this Party:

Brian J. Schaffer, Esquire
Identification No.: 79292

WHITE AND WILLIAMS LLP
1800 One Liberty Place
Philadelphia, PA 19103-7395
(215) 864-7064

FILED

MAR 24 2003

Doc#: 1403592 v1

**William A. Shaw
Prothonotary**

WHITE AND WILLIAMS LLP

BY: Brian J. Schaffer, Esquire
Identification No.: 79292
1800 One Liberty Place
Philadelphia, PA 19103-7395
(215) 864-7000

Attorney for Plaintiff

KITKO WOOD PRODUCTS, INC.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

v.

NO. 02-1343 C.D.

DANIEL J. CARNEY & SON

JURY TRIAL DEMANDED

PLAINTIFF'S REPLY TO DEFENDANT'S NEW MATTER

26. Denied. The averments contained in the aforesaid paragraph are conclusions of law to which no response is required under the rules of civil procedure. By way of further answer, and not in derogation of the foregoing, strict proof thereof is demanded at trial.

27. Denied. The averments contained in the aforesaid paragraph are conclusions of law to which no response is required under the rules of civil procedure. By way of further answer, and not in derogation of the foregoing, strict proof thereof is demanded at trial.

28. Denied. The averments contained in the aforesaid paragraph are conclusions of law to which no response is required under the rules of civil procedure. By way of further answer, and not in derogation of the foregoing, strict proof thereof is demanded at trial.

29. Denied. The averments contained in the aforesaid paragraph are conclusions of law to which no response is required under the rules of civil procedure. By way of further answer, and not in derogation of the foregoing, strict proof thereof is demanded at trial.

WHITE AND WILLIAMS LLP

BY: 
BRIAN J. SCHAFFER, ESQUIRE
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, BRIAN J. SCHAFFER, ESQUIRE, hereby certify that I have served upon the counsel listed below a true and correct copy of Plaintiff's Reply to Defendant's New Matter, on March 20, 2003, by first class mail, postage prepaid:

Troy J. Harper, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825

WHITE AND WILLIAMS LLP

BY:


BRIAN J. SCHAFFER, ESQUIRE
Attorney for Plaintiff

FILED

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William A. Shaw
Prothonotary

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

KITKO WOOD PRODUCTS, INC.,

CIVIL ACTION - LAW

Plaintiff,

Number 02 - 1343 C.D.

vs.

Type of Case: Civil Division

DANIEL J. CARNEY & SON,

Type of Pleading: Certificate of Service

Defendant.

Filed on behalf of: Defendant

Counsel of Record for this Party:

**Troy J. Harper
Supreme Court Number: 74753**

**John C. Dennison, II
Supreme Court Number: 29408**

**DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316**

FILED

JUL 29 2003

William A. Shaw
Prothonotary/Clerk of Courts

KITKO WOOD PRODUCTS, INC.,

Plaintiff,

vs.

DANIEL J. CARNEY & SON,

Defendant.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
*
* Civil Action - Law
*
*
* Number 02 - 1343 C.D.

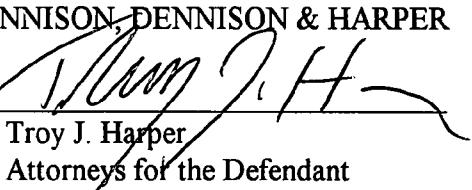
CERTIFICATE OF SERVICE

I certify that an original and one certified copy of the Defendant's Answers and Objections to the Plaintiff's Interrogatories Directed to Defendant and an original and one certified copy of the Defendant's Responses and Objections to the Plaintiff's Request for Production of Documents Directed to the Defendant were served on the 28th day of July, 2003, by United States Mail, First Class, Postage Prepaid, addressed to the following:

Brian J. Schaffer, Esq.
White & Williams, LLP
1800 Liberty Place
Philadelphia, Pennsylvania 19103

DENNISON, DENNISON & HARPER

By


Troy J. Harper
Attorneys for the Defendant

FILED
M 11:29 AM '03
JUL 29 2003
EAC
FJD

William A. Shaw
Prothonotary/Clerk of Courts

DENNISON, DENNISON & HARPER

ATTORNEYS AT LAW

293 MAIN STREET

BROOKVILLE, PENNSYLVANIA 15825

WHITE AND WILLIAMS LLP

BY: Brian J. Schaffer, Esquire
Identification No.: 79292
1800 One Liberty Place
Philadelphia, PA 19103-7395
(215) 864-7000

Attorney for Plaintiff

KITKO WOOD PRODUCTS, INC.

: COURT OF COMMON PLEAS
CLEARFIELD COUNTY

v.

: NO. 02-1343 C.D.

DANIEL J. CARNEY & SON

:

PRAECIPE TO SETTLE, DISCONTINUE AND END

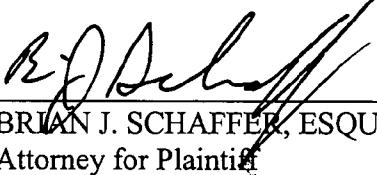
TO THE PROTHONOTARY:

Please mark the above-captioned matter "SETTLED, DISCONTINUED, AND ENDED" as to all defendants.

Respectfully submitted,

WHITE AND WILLIAMS LLP

BY:


BRIAN J. SCHAFFER, ESQUIRE
Attorney for Plaintiff

Date: 2/10/05

FILED

M 1:59 PM 1/10/05
to attorney
copy to CA
FEB 14 2005

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Kitko Wood Products, Inc.

Vs.
Daniel J. Carney & Son

No. 2002-01343-CD

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 February 14, 2005, marked:

Discontinued, Settled and Ended.

Record costs in the sum of \$144.45 have been paid in full by Attorney Schaffer.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 14th day of February A.D. 2005.

William A. Shaw, Prothonotary