

2003-135-CD
DAVID J. KARCEWSKI

VS

MORTON BUILDINGS, INC.

**The Superior Court of Pennsylvania
Sitting at Pittsburgh**

1015 Grant Building
Pittsburgh, Pennsylvania
15219

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

PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572

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

**Original Record in one part, Two Transcripts, One set of Exhibits and Certified Copy
Of discontinuance**

As remanded from said court in the following matter:

**IN RE: David Karczewski, etc. v. Morton Buildings Inc., etc
NO. 44 WDA 2006**

5/9/2006
5/9/2006
May 05 2006
(LK)
William A. Shaw
Prothonotary/Clerk of Courts

**Court of Common Pleas, Civil Division of the County of Clearfield
At NO. 03-135-CD**

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is **May 2, 2006**

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

Eleanor R. Valecko

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: May 5, 2006

William A. Shaw
(Signature & Title)

**WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA**



Superior Court of Pennsylvania

Karen Reid Bramblett, Esq.
Prothonotary

Eleanor R. Valecko
Deputy Prothonotary

Western District

May 2, 2006

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
412-565-7592
www.superior.court.state.pa.us

Notice of Discontinuance of Action

RE: Karczewski, D. v. Morton Buildings, Inc., etc.

Appeal of:

Type of Action: Notice of Appeal

No. 44 WDA 2006

Clearfield County Court of Common Pleas

Agency Docket Number: No. 03-135-CD

MAILED NO CC
MAY 05 2006 CR

William A. Shaw
Prothonotary/Clerk of Courts

The above-captioned matter has been marked "Discontinued" with this court.
Certification is being sent to the lower court.

Attorney Name	Party Name	Party Type
Theron G. Noble, Esq.	David Karczewski	Appellee
John Robert Ryan, Esq.	Morton Buildings, Inc.	Appellant

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

A

1014 - 10/99

10/1/99

In the Superior Court of
Pennsylvania

Sitting at Pittsburgh

No. 44 WDA 2006

David Karczewski, etc

v.

Morton Buildings, Inc., an Illinois
Corporation, Appellant

Appeal from the Order entered in this matter
on December 16, 2005, by the Hon. Frederic
Ammerman, P.J., Court of Common Pleas,
Civil Div of the County of Clearfield
At NO. 03-135-CD

:

FILED NO
MP 2361
MAY 05 2006 CR

CERTIFIED FROM THE RECORD

William A. Shaw
Prothonotary/Clerk of Courts

May 1, 2006 – Praeclipe for Discontinuance filed.

Appeal Discontinued

Testimony Whereof, I have hereunto set my hand and the seal of said Court at
Pittsburgh

Pa. this

2ND

Day of

MAY

2006

Eleana R. Valecko
DEPUTY PROTHONOTARY

Appeal Docket Sheet

Docket Number: 44 WDA 2006

Superior Court of Pennsylvania

Page 1 of 2

January 9, 2006



David Karczewski, an adult individual

V.

Morton Buildings, Inc., an Illinois Corporation, Appellant

03-135-CD

Initiating Document: Notice of Appeal

FILED
JAN 11 2006
6K

Case Status: Active

Case Processing Status: January 9, 2006

Awaiting Original Record

Journal Number:

William A. Shaw
Prothonotary/Clerk of Courts

Case Category: Civil

CaseType: Assumpsit

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: January 23, 2006

Next Event Type: Original Record Received

Next Event Due Date: February 21, 2006

COUNSEL INFORMATION

Appellant Morton Buildings, Inc.

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Ryan, John Robert

Bar No.: 38739

Law Firm: Belin & Kubista

Address: 15 N Front Street

Clearfield, PA 16830

Phone No.: (814)765-8972

Fax No.: (814)765-9893

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Karczewski, David

Pro Se: Appoint Counsel Status:

IFP Status:

Appellee Attorney Information:

Attorney: Noble, Theron G.

Bar No.: 55942

Law Firm: Ferraraccio & Noble

Address: 301 E Pine Street

Clearfield, PA 16830

Phone No.: (814)765-4990

Fax No.: (814)765-9377

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

RECORDED
JAN 25 2006
PITTSBURGH OFFICE
SUPERIOR COURT

RECORDED
JAN 25 2006
PITTSBURGH OFFICE
SUPERIOR COURT

RECORDED
JAN 25 2006
PITTSBURGH OFFICE
SUPERIOR COURT

Record / Part
21 pages. + / Set EXH. S.

3023

Appeal Docket Sheet

Docket Number: 44 WDA 2006

Page 2 of 2

January 9, 2006

Superior Court of Pennsylvania



FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
1/9/06	Notice of Appeal	60.00	60.00	2006SPRWD000022

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Date of OrderAppealed From: December 16, 2005

Date Documents Received: January 9, 2006

Order Type: Order Entered

Judge: Ammerman, Fredric J.
President Judge

Division: Civil

Judicial District: 46

Date Notice of Appeal Filed: January 3, 2006

OTN:

Lower Court Docket No.: No. 03-135-CD

ORIGINAL RECORD CONTENTS

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

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
January 9, 2006	Notice of Appeal Filed	Appellant	Morton Buildings, Inc.
January 9, 2006	Docketing Statement Exited (Civil)		Western District Filing Office

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

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

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

03-135-CD

David J. Karczewski
VS.
Morton Buildings, Inc.

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

The documents compromising the record have been numbered from **No. 1 to No. 39**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages compromising the document.

The date on which the record had been transmitted to the Appellate Court is
April 20, 2006.



Prothonotary/Clerk of Courts

(seal)

Date: 04/19/2006

Time: 02:41 PM

Page 1 of 3

C field County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Judge	
02/03/2003	Filing: Civil Complaint Paid by: Noble, Theron G. (attorney for Karczewski, David J.) Receipt number: 1854931 Dated: 02/03/2003 Amount: \$85.00 (Check) 3 Cert. to Atty.	No Judge
02/07/2003	Acceptance of Service, Complaint accepted on behalf of Defendant Morton Buildings, Inc., filed by s/John R. Ryan, Esq. No CC	No Judge
02/24/2003	Answer, New Matter and Counterclaim. filed by s/John R. Ryan, Esquire Verification s/Bill Shanahan, Manager 2 cc Atty Ryan	No Judge
03/14/2003	Reply To New Matter and Answer To Counter-Claim. filed by s/Theron G. Noble, Esquire Notice of Service no cc	No Judge
03/19/2003	Verification. s/David J. Karczewski Notice of Service no cc	No Judge
04/23/2003	Certificate of Service, Notice of Deposition upon: Defendant via Defendant's Attorney. filed by s/John R. Ryan, Esq. no cc	No Judge
11/24/2003	Notice of Service, Plaintiff's First Set Of Discovery Materials upon: JOHN R. RYAN, ESQUIRE filed by, s/HERON G. NOBLE, ESQUIRE no cc	No Judge
01/28/2004	Motion to Compel, filed by Atty. Noble no cert. copies.	No Judge
02/02/2004	RULE TO SHOW CAUSE, NOW, this 27th day of January, 2004, issued upon the DEFENDANT. RULE RETURNABLE, for filing Written Response, is set for the 19th day of Feb. 2004 and Argument on the Petition set for the 23rd day of February, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 2 cc to Atty Noble	Fredric Joseph Ammerman
02/09/2004	Notice of Service, Rule To Show Cause upon John R. Ryan, Esquire filed by, s/Theron G. Noble, Esq. no cc	Fredric Joseph Ammerman
02/13/2004	Answer of Defendant to Motion to Compel, filed by Atty. Ryan 3 Cert. to Atty. Certificate of Service, filed by Atty. Ryan Served copy of Defendant's Answer to Plaintiff's Motion to Compel on Atty. Noble	Fredric Joseph Ammerman
02/25/2004	ORDER, NOW, this 23rd day of February, 2004, following Argument on Plaintiff's Motion to Compel, the Motion is DENIED in regard to Interrogatories 8,9,10,15,16,22,23,24, and 26. The Motion to Compel is GRANTED in regard to Interrogatory 11. Defendant shall have no more than 45 days from this date to provide a more specific response to Interrogatory 11. by the Court, s/FJA, P.J. 1 cc Atty Noble, Ryan	Fredric Joseph Ammerman
03/08/2005	Certificate of Readiness For Non-Jury Trial, filed by s/ John R. Ryan Esquire. no CC	Fredric Joseph Ammerman
04/27/2005	Order, AND NOW, this 26th day of April, 2005, it is the ORDER of the Court that a Pre-Trial Conference shall be held on the 13th day of May, 2005, in Chambers at 2:00 p.m. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. CC to Atty's Noble & Ryan	Fredric Joseph Ammerman
07/21/2005	Order, this 20th day of July, 2005, it is the Order of the Court that Civil Non-Jury Trial has been scheduled for Tuesday, August 2, 2005 and Wednesday, August 3, 2005 at 9:00 a.m. each day in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty's: Noble, Ryan	Fredric Joseph Ammerman I hereby certify this to be a true and attested copy of the original statement filed in this case.

APR 19 2006

Attest

[Signature]
Prothonotary/
Clerk of Courts

Date: 04/19/2006

Time: 02:41 PM

Page 2 of 3

Cuyahoga County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Judge
08/04/2005	Order, this 3rd day of August, 2005, following conclusion of civil nonjury trial, it is the Order of this Court that counsel for Plaintiff provide the Court with brief within no more than 20 days from today's date; and upon receipt of Plaintiff's brief, counsel for Defendant shall have 20 days thereafter to respond in kind. By The Court, /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Noble, Ryan
11/09/2005	Order NOW, this 8th day of November 2005, following nonjury trial and the Fredric Joseph Ammerman receipt of the parties briefs, it is the finding and ORDER of this Court as follows: 1. the Court finds that the Defendant has breached the contract entered into between the parties by not constructing the cement floor in a good and workmanlike manner, see oringal for details. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Attys: Noble and Ryan.
11/17/2005	Motion For Post-Trial Relief, filed by s/ John R. Ryan, Esquire. 4CC Atty. Fredric Joseph Ammerman Ryan
11/21/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC. in the above captioned matter on the following party on the 18th day of November 2005 to Theron G. Noble Esq. filed by s/ John R. Ryan Esq. No CC. Order AND NOW, this 18th day of November, 2005, upon consideration of Fredric Joseph Ammerman the foregoing Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that said Motion be scheduled for Argument the 16th day of December, 2005, at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Ryan.
11/23/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on Theron G. Noble Esq on the 18th day of November, 2005 filed by s/ John R. Ryan Esq. No CC.
12/15/2005	Order AND NOW, this 9th day of December, 2005, counsel for both parties Fredric Joseph Ammerman having indicated that they wish to waive oral argument on the Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that the Argument scheduled for December 16, 2005 at 11:00 a.m. be and is hereby cancelled. The Court will issue its ruling on Motion for Post-Trial without argument. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble, and Ryan.
12/19/2005	Order NOW, this 16th day of December, 2005, it is the ORDER of this Court that the Defendant's Motion for Post Trial Relief filed November 17, 2005 be and is hereby DISMISSED. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.
12/28/2005	Filing: Praeclipe for Entry of Judgment Paid by: Ryan, John R. (attorney for Fredric Joseph Ammerman Morton Buildings, Inc.) Receipt number: 1911832 Dated: 12/28/2005 Amount: \$20.00 (Check) Judgment is entered in favor of the Plaintiff and against the Defendant. Two CC Attorney Ryan Notice to Attorneys Ryan and Noble
12/29/2005	Filing: Praeclipe To Enter Judgment Paid by: Noble, Theron G. (attorney for Karczewski, David J) Receipt number: 1911857 Dated: 12/29/2005 Amount: \$20.00 (Check) Judgment in favor of Plaintiff and against Defendant in the amount of \$26,175. Filed by s/ Theron G. Noble, Esquire. No CC, Notice to Atty Ryan Judgment entered against the Defendant in the amount \$26,175.00 plus interest and costs Notice to Atty. Ryan.

Date: 04/19/2006

Time: 02:41 PM

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C' field County Court of Common Pleas

ROA Report

Case: 2003-00135-CD

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Judge	
01/03/2006	Filing: Appeal to High Court Paid by: Ryan, John R. (attorney for Morton Buildings, Inc.) Receipt number: 1911915 Dated: 01/03/2006 Amount: \$45.00 (Check) Notice of Appeal, filed by s/ John R. Ryan, Esquire. 6CC Atty., 1CC & Ck. Fredric Joseph Ammerman for \$60.00 to Superior Crt.	Fredric Joseph Ammerman
01/06/2006	Request For Transcript, filed by s/ John R. Ryan, Esquire. 7CC Atty. Ryan Order NOW, this 5th day of January, 2006, the Court Having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Morton Buildings, Inc., Appellant, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in Rule 1925 (b) of the Rules of Appellate Procedure. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
01/09/2006	Statement of Matters Complained of Pursuant to Pa. R.A.P. Rule 1025(b). Filed by s/ John R. Ryan, Esquire. 5CC Atty. Ryan	Fredric Joseph Ammerman
01/10/2006	Certificate of Service, filed. Served a certified copy of the Statement of Matters Complained of filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above-captioned matter on the 10th day of January 2006 to The Honorable Fredric J. Ammerman and Theron G. Noble Esq., filed by s/ John R Ryan Esq. No CC.	Fredric Joseph Ammerman
01/11/2006	Appeal Docket Sheet filed. 44 WDA 2006	Fredric Joseph Ammerman
03/16/2006	Opinion, March 16, 2006, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys Ryan, Noble One CC D. Mikesell and Law Library	Fredric Joseph Ammerman
03/17/2006	Appeal mailed to Superior Court March 17, 2006. Letters to counsel of record. Certified Mail Receipt, filed. Record mail to Superior Court.	Fredric Joseph Ammerman
03/22/2006	Certified Mail Receipt, filed. To Superior Court of PA, received 3-20-2006	Fredric Joseph Ammerman
04/13/2006	Order, Certified From the Record, In The Superior Court of Penna., Ordered that the record is Remanded to the trial court for a period of time not to exceed 40 days during which time the trial court shall insure that all transcripts ordered and paid for by appellant have been included in the record. The briefing schedule is Suspended and shall be reset following the return of the record to this court. Jurisdiction of this court is retained pending compliance with this Court's Order. Prothonotary is Directed to transmit a copy of the instant application to the trial court along with a copy of this order. Per Curiam, dated 4/10/06. copy to Judge Ammerman Certificate of Contents of Remanded Record and Notice of Remand, Record to be returned to Superior Court on or before May 22, 2006 Record is remanded April 12, 2006	Fredric Joseph Ammerman
04/17/2006	Transcript of Proceedings, Civil Non-Jury Trial August 2, 2005, filed. Transcript of Proceedings, Civil Non-Jury Trial August 3, 2005, filed.	Fredric Joseph Ammerman Fredric Joseph Ammerman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ENNSYLVANIA

No. 03-135-CD
David J. Karczewski
VS.
Morton Buildings, Inc.

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	02/03/2003	Civil Complaint	16
02	02/07/2003	Acceptance of Service, Complaint	02
03	02/24/2003	Answer, New Matter and Counterclaim	11
04	03/14/2003	Reply To New Matter and Answer To Counter-Claim	06
05	03/19/2003	Verification	02
06	04/23/2003	Certificate of Service, Notice of Deposition	01
07	11/24/2003	Notice of Service, Plaintiff's First Set of Discovery Materials	01
08	01/28/2004	Motion to Compel	14
09	02/02/2004	Rule to Show Cause	01
10	02/09/2004	Notice of Service, Rule to Show Cause	01
11	02/13/2004	Answer of Defendant to Motion to Compel	07
12	02/13/2004	Certificate of Service	02
13	02/25/2004	Order, Re: Plaintiff's Motion to Compel	01
14	03/08/2005	Certificate of Readiness for Non-Jury Trial	01
15	04/27/2005	Order, Re: Pre-Trial Conference scheduled	01
16	07/21/2005	Order, Re: Civil Non-Jury Trial scheduled	01
17	08/04/2005	Order, Re: Counsel to provide brief	01
18	11/09/2005	Order, Re: Finding of Court following trial and receipt of briefs	03
19	11/17/2005	Motion for Post-Trial Relief	07
20	11/21/2005	Certificate of Service, Motion for Post-Trial Relief	02
21	11/21/2005	Order, Re: Motion scheduled for argument	02
22	11/23/2005	Certificate of Service, copy of Motion for Post-Trial Relief	02
23	12/15/2005	Order, Re: argument rescheduled	02
24	12/19/2005	Order, Re: Defendant's Motion for Post Trial Relief Dismissed	02
25	12/28/2005	Praecipe for Entry of Judgment, filed on behalf of Defendant	04
26	12/29/2005	Praecipe to Enter Judgment, filed on behalf of Plaintiff	04
27	01/03/2006	Appeal to High Court	05
28	01/03/2006	Request for Transcript	02
29	01/06/2006	Order, Re: concise statement	02
30	01/09/2006	Statement of Matters Complained of Pursuant to Pa.R.A.P. Rule 1025(b)	03
31	01/10/2006	Certificate of Service, Statement of Matters Complained of	02
32	01/11/2006	Appeal Docket Sheet, Superior Court No. 44 WDA 2006	02
33	03/16/2006	Opinion	08
34	03/17/2006	Certified Mail Receipt, Appeal mailed to Superior Court	01
35	03/22/2006	Certified Mail Receipt, received by Superior Court	01
36	04/13/2006	Superior Court Order, record remanded to trial court for 40 days	01
37	04/13/2006	Certificate of Contents of Remanded Record and Notice of Remand	01
38	04/17/2006	Transcript of Proceedings, Civil Non-Jury Trial August 2, 2005	Separate Cover
39	04/17/2006	Transcript of Proceedings, Civil Non-Jury Trial August 3, 2005	Separate Cover

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

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

David J. Karczewski

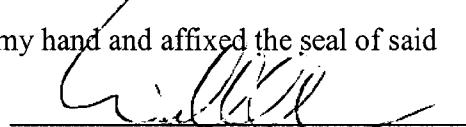
VS.

Morton Buildings, Inc.

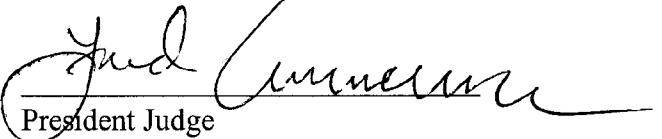
03-135-CD

So full and entire as the same remains of record before the said Court, at **No. 03-135-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 14th Day of April, 2006.


Prothonotary/Clerk of Courts

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


President Judge

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

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 20th day of April, 2006.


Prothonotary/Clerk of Courts

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

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

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

03-135-CD

David J. Karczewski
VS.
Morton Buildings, Inc.

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

The documents comprising the record have been numbered from **No. 1 to No. 33**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is March 17, 2004.


Prothonotary/Clerk of Courts

(seal)

Date: 03/17/2006

Clerk Field County Court of Common Pleas

User: BHUDSON

Time: 09:01 AM

ROA Report

Page 1 of 3

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

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02/13/2004	Answer of Defendant to Motion to Compel, filed by Atty. Ryan 3 Cert. to Atty. Fredric Joseph Ammerman
	Certificate of Service, filed by Atty. Ryan Served copy of Defendant's Answer to Plaintiff's Motion to Compel on Atty. Noble Fredric Joseph Ammerman
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03/08/2005	Certificate of Readiness For Non-Jury Trial, filed by s/ John R. Ryan Esquire. no CC Fredric Joseph Ammerman
04/27/2005	Order, AND NOW, this 26th day of April, 2005, it is the ORDER of the Court that a Pre-Trial Conference shall be held on the 13th day of May, 2005, in Chambers at 2:00 p.m. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. CC to Attys Noble & Ryan Fredric Joseph Ammerman
07/21/2005	Order, this 20th day of July, 2005, it is the Order of the Court that Civil Non-Jury Trial has been scheduled for Tuesday, August 2, 2005 and Wednesday, August 3, 2005 at 9:00 a.m. each day in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, Ryan Fredric Joseph Ammerman
08/04/2005	Order, this 3rd day of August, 2005, following conclusion of civil nonjury trial, it is the Order of this Court that counsel for Plaintiff provide the Court with brief within no more than 20 days from today's date; and upon receipt of Plaintiff's brief, counsel for Defendant shall have 20 days thereafter to respond in kind. By The Court, /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Noble, Ryan Fredric Joseph Ammerman

Date: 03/17/2006

Cliffield County Court of Common Pleas

User: BHUDSON

Time: 09:01 AM

ROA Report

Page 2 of 3

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Judge
11/09/2005	Order NOW, this 8th day of November 2005, following nonjury trial and the receipt of the parties briefs, it is the finding and ORDER of this Court as follows: 1. the Court finds that the Defendant has breached the contract entered into between the parties by not constructing the cement floor in a good and workmanlike manner, see oringal for details. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty: Noble and Ryan.
11/17/2005	Motion For Post-Trial Relief, filed by s/ John R. Ryan, Esquire. 4CC Atty. Fredric Joseph Ammerman Ryan
11/21/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC. in the above captioned matter on the following party on the 18th day of November 2005 to Theron G. Noble Esq. filed by s/ John R. Ryan Esq. No CC. Order AND NOW, this 18th day of November, 2005, upon consideration of the foregoing Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that said Motion be scheduled for Argument the 16th day of December, 2005, at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Ryan.
11/23/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on Theron G. Noble Esq on the 18th day of November, 2005 filed by s/ John R. Ryan Esq. No CC.
12/15/2005	Order AND NOW, this 9th day of December, 2005, counsel for both parties having indicated that they wish to waive oral argument on the Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that the Argument scheduled for December 16, 2005 at 11:00 a.m. be and is hereby cancelled. The Court will issue it ruling on Motion for Post-Trial without argument. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty: Noble, and Ryan.
12/19/2005	Order NOW, this 16th day of December, 2005, it is the ORDER of this Court that the Defendant's Motion for Post Trial Relief filed November 17, 2005 be and is hereby DISMISSED. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty: Noble and Ryan.
12/28/2005	Filing: Praeclipe for Entry of Judgment Paid by: Ryan, John R. (attorney for Fredric Joseph Ammerman Morton Buildings, Inc.) Receipt number: 1911832 Dated: 12/28/2005 Amount: \$20.00 (Check) Judgment is entered in favor of the Plaintiff and against the Defendant. Two CC Attorney Ryan Notice to Attorneys Ryan and Noble
12/29/2005	Filing: Praeclipe To Enter Judgment Paid by: Noble, Theron G. (attorney for Karczewski, David J) Receipt number: 1911857 Dated: 12/29/2005 Amount: \$20.00 (Check) Judgment in favor of Plaintiff and against Defendant in the amount of \$26,175. Filed by s/ Theron G. Noble, Esquire. No CC, Notice to Atty Ryan Judgment entered against the Defendant in the amount \$26,175.00 plus interest and costs Notice to Atty. Ryan.
01/03/2006	Filing: Appeal to High Court Paid by: Ryan, John R. (attorney for Morton Buildings, Inc.) Receipt number: 1911915 Dated: 01/03/2006 Amount: \$45.00 (Check) Notice of Appeal, filed by s/ John R. Ryan, Esquire. 6CC Atty., 1CC & Ck. Fredric Joseph Ammerman for \$60.00 to Superior Crt. Request For Transcript, filed by s/ John R. Ryan, Esquire. 7CC Atty. Ryan Fredric Joseph Ammerman

Date: 03/17/2006

Clerk of Court County Court of Common Pleas

User: BHUDSON

Time: 09:01 AM

ROA Report

Page 3 of 3

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Judge	
01/06/2006	Order NOW, this 5th day of January, 2006, the Court Having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Morton Buildings, Inc., Appellant, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in RULE 1925 (b) of the Rules of Appellate Procedure. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
01/09/2006	Statement of Matters Complained of Pursuant to Pa. R.A.P. Rule 1025(b). Filed by s/ John R. Ryan, Esquire. 5CC Atty. Ryan	Fredric Joseph Ammerman
01/10/2006	Certificate of Service, filed. Served a certified copy of the Statement of Matters Complained of filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above-captioned matter on the 10th day of January 2006 to The Honorable Fredric J. Ammerman and Theron G. Noble Esq., filed by s/ John R Ryan Esq. No CC.	Fredric Joseph Ammerman
01/11/2006	Appeal Docket Sheet filed.	Fredric Joseph Ammerman
03/16/2006	Opinion, March 16, 2006, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys Ryan, Noble One CC D. Mikesell and Law Library	Fredric Joseph Ammerman

I hereby certify this to be a true and correct copy of the above-stated.

MAR 1 2006

AMERMAN

Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 03-135-CD
David J. Karczewski
VS.
Morton Buildings, Inc.

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	02/03/2003	Civil Complaint	16
02	02/07/2003	Acceptance of Service, Complaint	02
03	02/24/2003	Answer, New Matter and Counterclaim	11
04	03/14/2003	Reply To New Matter and Answer To Counter-Claim	06
05	03/19/2003	Verification	02
06	04/23/2003	Certificate of Service, Notice of Deposition	01
07	11/24/2003	Notice of Service, Plaintiff's First Set of Discovery Materials	01
08	01/28/2004	Motion to Compel	14
09	02/02/2004	Rule to Show Cause	01
10	02/09/2004	Notice of Service, Rule to Show Cause	01
11	02/13/2004	Answer of Defendant to Motion to Compel	07
12	02/13/2004	Certificate of Service	02
13	02/25/2004	Order, Re: Plaintiff's Motion to Compel	01
14	03/08/2005	Certificate of Readiness for Non-Jury Trial	01
15	04/27/2005	Order, Re: Pre-Trial Conference scheduled	01
16	07/21/2005	Order, Re: Civil Non-Jury Trial scheduled	01
17	08/04/2005	Order, Re: Counsel to provide brief	01
18	11/09/2005	Order, Re: Finding of Court following trial and receipt of briefs	03
19	11/17/2005	Motion for Post-Trial Relief	07
20	11/21/2005	Certificate of Service, Motion for Post-Trial Relief	02
21	11/21/2005	Order, Re: Motion scheduled for argument	02
22	11/23/2005	Certificate of Service, copy of Motion for Post-Trial Relief	02
23	12/15/2005	Order, Re: argument rescheduled	02
24	12/19/2005	Order, Re: Defendant's Motion for Post Trial Relief Dismissed	02
25	12/28/2005	Praecipe for Entry of Judgment, filed on behalf of Defendant	04
26	12/29/2005	Praecipe to Enter Judgment, filed on behalf of Plaintiff	04
27	01/03/2006	Appeal to High Court	05
28	01/03/2006	Request for Transcript	02
29	01/06/2006	Order, Re: concise statement	02
30	01/09/2006	Statement of Matters Complained of Pursuant to Pa.R.A.P. Rule 1025(b)	03
31	01/10/2006	Certificate of Service, Statement of Matters Complained of	02
32	01/11/2006	Appeal Docket Sheet, Superior Court No. 44 WDA 2006	02
33	03/16/2006	Opinion	08

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

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

David J. Karczewski

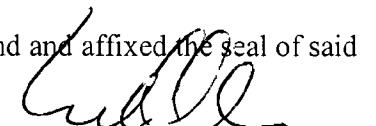
VS.

Morton Buildings, Inc.

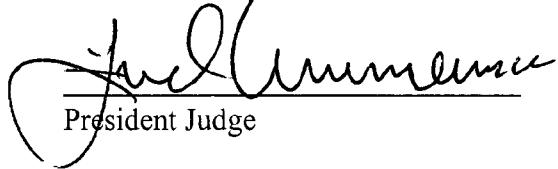
03-135-CD

So full and entire as the same remains of record before the said Court, at **No. 03-135-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 25th Day of JANUARY, 2006.

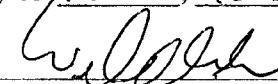

Prothonotary/Clerk of Courts

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


President Judge

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

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 17 day of MARCH, 2006


Prothonotary/Clerk of Courts

**The Superior Court of Pennsylvania
Sitting at Pittsburgh**

1015 Grant Building
Pittsburgh, Pennsylvania
15219

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

under

PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572

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

Record , Certified copy of order and copy of petition

Record to be returned to our court on or before May 22, 2006.

As remanded from said court in the following matter:

**IN RE: David Karczewski, etc. v. Morton Buildings Inc an illinois corporation
No. 44 WDA 2006**

**Court of Common Pleas, Civil Division of the County of Clearfield Co
At NO 03-135-CD**

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is **April 12, 2006**

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

Eleanor R. Valeck

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: *William Shaw* 4/13/06

WILLIAM A. SHAW
Prothonotary
(Signature & Title)
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

*m/11/09/06
APR 13 2006 ER*

William A. Shaw
Prothonotary/Clerk of Courts

(at 37)

In the Superior Court of Pennsylvania

Sitting at Pittsburgh

NO. 44 WDA 2006

David Karczewski An Adult Individual

v.

Morton Buildings Inc., an Illinois
Corporation Appellant

Appeal from the Order entered in this matter
on December 16, 2005, by the Hon. Frederic
Ammerman, Court of Common Pleas, Civil
Division of the County of Clearfield
At No. 03-135-CD

CERTIFIED FROM THE RECORD

m/11/09 ~~copy to~~
APR 13 2006 *Judge*
Ammerman
William A. Shaw
Prothonotary/Clerk of Courts (6)

ORDER

Upon consideration of appellant Morton Buildings, Inc.'s March 31, 2006 "application for relief—extension of time," the following is.

ORDERED: The record is **REMANDED** to the trial court for a period of time not to exceed forty (40) days during which time the trial court shall insure that all transcripts ordered and paid for by appellant have been included in the record. The briefing schedule is **SUSPENDED** and shall be reset following the return of the record to this court. Jurisdiction of this court is **RETAINED** pending compliance with this order. For the trial court's information, the prothonotary is **DIRECTED** to transmit a copy of the instant application to the trial court along with a copy of this order.

Date: 4/10/06

Per Curiam

Testimony Whereof, I have hereunto set my hand and the seal of said Court at
Pittsburgh
Pa. this 12th Day of April 2006

Eleanor R. Valecko

DEPUTY PROTHONOTARY

#252

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Superior Court of Pennsylvania
Office of Prothonotary
600 Court Building
Pittsburgh PA 15219

03-135 (D)

COMPLETE THIS SECTION ON DELIVERY

A. Signature <i>C. J. Shaw</i>	<input type="checkbox"/> Agent
<input checked="" type="checkbox"/> X	<input type="checkbox"/> Addressee
B. Received by (Printed Name)	C. Date of Delivery 3-26
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
E. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
F. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

2. Article Number

(Transfer from service label)

7002 2030 0004 5014 8040

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

03-135 (D)

3/10/40801
100-22-2006 (at)

William A. Shaw
Prothonotary/Clerk of Courts

at 35

MAR 17 2006 (Ew)
01/11:30 AM
William J. Stev
Prothonotary

03-135-C9

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PS Form 3800, June 2002
See reverse for instructions

(2134)

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

DAVID J. KARCEWSKI,
an adult individual,
Plaintiff,

No. 03-135-CD

v.

MORTON BUILDING, INC.,
an Illinois corporation,
Defendant.

Rec Atty: Noble
Ryan
01/25/07
D. M. Kessell
Law Library
Clearfield County Court

OPINION

This case involves a breach of contract action between David J. Karczewski (hereinafter "Plaintiff") and Morton Buildings, Inc. (hereinafter "Defendant" or "Morton"). Non-jury civil trial was held August 2, 2005. Upon consideration of the presented evidence and the submitted Post-Trial Briefs, the Court found in favor of Plaintiff. Defendant then appealed and this Opinion is issued pursuant to Pennsylvania Rule of Appellate Procedure 1925(a).

The Defendant alleges five (5) errors in his Concise Statement of Matters Complained of on Appeal filed on January 9, 2006, as follows:

1. The trial court committed an error of law in permitting Plaintiff's expert witness, Brooks Harris, to express his opinion on the issue of liability, where the written reports authored by Harris and provided in discovery did not address the issue of liability, but were limited to the issue of damages.
2. The trial court committed an abuse of discretion in ignoring, or failing to give appropriate weight, to the expert testimony of Defendant's witness Walter Schneider and by accepting the testimony of Plaintiff's expert Brooks Harris where it conflicted with that of Schneider.
3. The trial court's finding that Defendant was liable for breach of contract by failing to construct the concrete floor in a good and workmanlike manner, thereby rendering the floor unfit for its intended purpose, is unsupported by the evidence, where Plaintiff admitted that he designed the floor, including the placement of the drains, where Plaintiff admitted that he was advised by Defendant that Plaintiff's design would require him to manually push fluids to

Exhibit 33

the trench drain, and where Plaintiff nonetheless insisted on the construction pursuant to his design.

4. In the alternative, the trial court's finding that the appropriate remedy for the Defendant's breach of contract was total removal and replacement of the floor was not supported by the evidence, where the court was provided with unequivocal testimony by a qualified expert that there were other less drastic remedies available.
5. The trial court abused its discretion in determining the amount of damages awarded to Plaintiff, where the Defendant presented clear and unequivocal testimony from a qualified expert that showed the amount of damages claimed by Plaintiff were not reasonable since there were less drastic solutions available.

First, the Defendant alleges that Plaintiff's expert, Brooks Harris, should not have been permitted to testify in excess of his expert report, as his addressed damage issues and not liability. Pennsylvania Rule of Civil Procedure 4003.5(c) provides that an expert's direct testimony may not go beyond the fair scope of his report(s) prepared during the process of discovery. The Commonwealth Court explained the application of Rule 4003.5(c) more fully in Com., Dept. of General Services, et al. v. United States Mineral Products Company, et al.:

The question of whether the permissible limits of testimony under the Rule have been violated is to be determined on a case by case basis, and the essence of the inquiry is fairness. The question is whether the discrepancy between the expert's pretrial report and his trial testimony is of a nature which would prevent the adversary from preparing a meaningful response, or which would mislead the adversary as to the nature of the appropriate response. The opposing party must be prejudiced as a result of the testimony going beyond the fair scope of the expert's report before admission of the testimony is considered reversible error.

809 A.2d 1000, 1032 (Pa.Cmwlth. 2002) (internal citations omitted).

The Plaintiff's expert report contains a full paragraph impliedly discussing liability. The expert opines the Defendant's recommended solution "will not solve the drainage problem and provide the structural stability required by the lift's manufacturer." (Judge Exhibit A, p. 2)

Additionally, Defendant's own expert witness acknowledges liability in his pre-trial report. "We

have documented that the floor does pond in the center of the building. With this fact in mind, we feel that the presence of standing water and other liquids present in this type of environment does pose a slip hazard to the occupants of the space as well as a housekeeping problem."

(Defense Exhibit B, p. 3) The acknowledgment was continued during trial where Mr. Schneider expressly acknowledged the floor, in its present condition, was unsafe. Based upon both engineering experts' references to liability, there was no surprise or prejudice to the Defendant from Mr. Harris' testimony.

Next, the Defendant alleges the Court failed to properly consider the conflicting expert testimony provided by both parties' witnesses. In other words, the Defendant claims the Court was obligated to grant more weight to Defendant's expert because of his allegedly greater qualifications. The sufficiency of an expert's qualifications to testify is solely within the discretion of the trial court. "Whether a witness has been properly qualified to express an expert opinion is generally vested in the sound discretion of the trial court." Gloviak v. Tucci Const. Co., Inc., 608 A.2d 557, 559 (Pa.Super. 1992). Here both parties' witnesses were qualified to testify as experts. However, the qualification of a witness to testify as an expert is a threshold determination. The Court is not required to find any particular expert's testimony to be credible. In Diener Brick Co. v. Mastro Masonry Contractor, the Superior Court explains:

Our appellate role in cases arising from non-jury trials is to determine whether the findings of the trial court are supported by competent evidence and whether the trial court committed error in any application of the law. The findings of fact of the trial judge must be given the same weight and effect on appeal as the verdict of a jury. We consider the evidence in a light most favorable to the verdict winner. We will reverse the trial court only if its findings of fact are not supported by competent evidence or if its findings are premised on an error of law. (citations omitted).

885 A.2d 1034, 1038 (Pa.Super. 2005). Despite the defense expert's allegedly greater qualifications, this Court did not find his testimony to be credible. Mr. Schneider testified the

current floor was not defective. In support, he asserts the current floor complies with existing PennDOT regulations that require a floor's slope be one (1) percent or less for a commercial inspection station. As mentioned previously, a letter (Defense Exhibit B) from Mr. Schneider acknowledges unsafe conditions. Mr. Schneider's testimony affirming the opinion expressed in the letter are contradictory to Defendant's overall position that the floor was safe and not defective. Accordingly, the Court gave limited weight to the Defendant's expert.

On the other hand, the Court found greater credibility on the part of Plaintiff's expert, Brooks Harris. Mr. Harris testified to both liability and a workable remedy. First, he testified the current floor was unsafe because of the pooling of liquids in the center. Additionally, he questioned the Defendant's expert recommendation to correct the floor. Specifically, the defense recommended placing a drain near the low spot or creating a new piping system. Essentially, either of these remedies would create an opening in middle of the garage floor. Mr. Harris provided credible testimony of his safety concerns relative the proposed remedy. He questioned the continued integrity of the cement floor in conjunction with the hydraulic lifts, which require support to lift heavy commercial vehicles. Mr. Harris advocated complete replacement of the floor and the Court agreed the recommendation was reasonable under the circumstances.

Defendant next alleges no liability for failure to construct the floor in a good and workmanlike manner because the Plaintiff himself designed the floor, supplied the construction plans and should be obligated to accept the resulting floor. The general rule is that all building contracts, including contracts for commercial construction, contain an implied warranty for reasonable workmanship.¹ Defendant points to the axiom "[i]t is well established that a contractor who performs according to detailed plans and specifications is not responsible for

¹ See Wade v. Haycock, 25 Pa. 382 (1855); Elderkin v. Gaster, 288 A.2d 771 (Pa. 1972); Metropolitan Edison v. United Engineers, 4 D.&C. 3d 473 (1977); Moyer v. White, 48 D.&C. 3d 487 (1988) (discussing implied warranty of reasonable workmanship in construction contracts).

defects in the result.” Commonwealth Department of Transportation v. W.P. Dickerson, et al., 400 A.2d 930, 932 (citing Canuso v. Philadelphia, 326 Pa. 302, 192 A. 133 (1937); Filbert v. Philadelphia, 181 Pa. 530, 37 A. 545 (1897)). However, this Court believes the case at bar is factually distinguishable. In Dickerson, PennDOT provided detailed specifications to be used for constructing concrete beams. The specifications dictated the composition of, and the procedure for mixing, the concrete. Further, a team of PennDOT inspectors supervised the entire process and had the authority to stop the production at any time. The court concluded the contractor exercised “little if any independent discretion in the construction of the beams.” Id. Here, the Plaintiff exercised no control over the construction process. The contract contained no provision addressing the Plaintiff supervising the project. Plaintiff did provide drawings (Plaintiff Exhibit One) outlining his vision for a new building. The drawings are hand sketched on rough paper and not professionally created. The Plaintiff testified he wanted a sloped concrete floor with a trench drain located in the rear of the building, and the Morton representative agreed it could be constructed.

Further evidence of Plaintiff’s lack of control involves the installation of the floor. Plaintiff testified he noticed a low spot in the middle of the floor. Plaintiff expressed his concerns to the subcontractor, who responded that his belief was unwarranted. The next day, Defendant’s representative, Fred Lehman, came to review the progress. The Plaintiff again pointed out the problem and was told nothing could be done until the floor cured.

Clearly this evidence does not establish the necessary control to be exercised such that responsibility for the defective floor should be borne by Plaintiff. On the contrary, the evidence supports that the Plaintiff was relying on the skill of the builder. Precedent supports Plaintiff’s reliance. “Once construction has begun, the vendee has ‘no other choice but to rely on the skill

and integrity of the builder.” Moyer v. White, 48 D.&C. 3d 487 (1988) (citing Pittsburgh National Bank v. Welton Beckett Associates, 601 F.Supp. 887 (1985)). Additionally, the Court viewed a video (Joint Exhibit Three), which showed large amounts of grease and water on the floor. The video, coupled with Plaintiff’s testimony estimating the time to clean the floor is three (3) to four (4) hours per day establishes the defective condition. This Court considered the video tape to be important visual evidence in the case and recommends that the appellate court review it. The constant efforts required to remove water, grease and chemicals is a major interference with the Plaintiff’s ability to run his business and a considerable safety hazard.

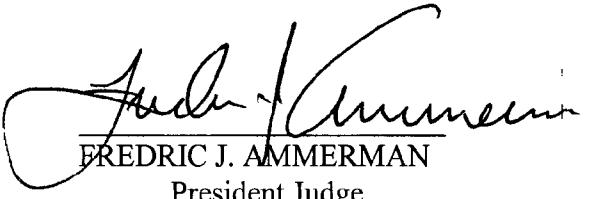
The Defendant questions the appropriateness of the remedy, and claims other less drastic remedies were available instead of total removal and replacement of the concrete floor. However, as discussed previously, the Court did not find Mr. Schneider’s recommendations to be credible. For example, the Court questioned Mr. Schneider directly, asking if it is possible to pour a concrete floor of this size that slopes in a particular direction as Plaintiff wished, without ponding. Ultimately, he responded affirmatively. Mr. Harris’ recommendations seemed more reasonable, especially due to safety concerns. He expressed a reluctance to breach the middle of the floor due to the hydraulic lifts necessary for Plaintiff’s business. Therefore, the Court was not obliged to follow the remedy recommended by Defendant’s expert.

Finally, the Defendant asserts the Court abused its discretion in determining the amount of damages when the Defendant presented expert testimony showing there were other less drastic solutions available. “Pennsylvania courts... have generally allowed damages for incomplete or defective performance of a building contract to be measured by the cost of completing the work or correcting the defects by another contractor.” Gloviak, 608 A.2d at 559 (quoting Douglass v. Licciarri Construction Co., Inc., 562 A.2d 913 (Pa.Super. 1989)). Here, the Plaintiff provided

credible evidence supporting the measure of damages. Witnesses included a civil engineer, general contractor, and certified public accountant. The Court evaluated the testimony and found the Plaintiff's witnesses to be more credible. Therefore, the remedy recommended by the Defendant was not mandatory. Damages as detailed in the Court's Order of November 8th, 2005 were appropriately determined based upon the detailed testimony of the Plaintiff's witnesses and accompanying exhibits.

BY THE COURT,

March 16, 2006


FREDRIC J. AMMERMAN
President Judge

Noble, Ryan

Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

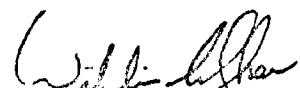
Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,



William A. Shaw
Prothonotary

DATE: 3/16/06

You are responsible for serving all appropriate parties.

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

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 44 WDA 2006

Page 1 of 2

January 9, 2006



David Karczewski, an adult individual

V.

Morton Buildings, Inc., an Illinois Corporation, Appellant

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: January 9, 2006

Awaiting Original Record

03-135-CD

FILED
 JAN 11 2006
 6K

William A. Shaw
Prothonotary/Clerk of Courts

Journal Number:

Case Category: Civil

Case Type: Assumpsit

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: January 23, 2006

Next Event Type: Original Record Received

Next Event Due Date: February 21, 2006

COUNSEL INFORMATION

Appellant Morton Buildings, Inc.

Pro Se: Appoint Counsel Status:

IPP Status: No

Appellant Attorney Information:

Attorney: Ryan, John Robert

Bar No.: 38739

Law Firm: Belin & Kubista

Address: 15 N Front Street

Clearfield, PA 16830

Phone No.: (814)765-8972

Fax No.: (814)765-9893

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Karczewski, David

Pro Se: Appoint Counsel Status:

IPP Status:

Appellee Attorney Information:

Attorney: Noble, Theron G.

Bar No.: 55942

Law Firm: Ferraraccio & Noble

Address: 301 E Pine Street

Clearfield, PA 16830

Phone No.: (814)765-4990

Fax No.: (814)765-9377

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 44 WDA 2006

Page 2 of 2

January 9, 2006



FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
1/9/06	Notice of Appeal	60.00	60.00	2006SPRWD000022

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of OrderAppealed From: December 16, 2005

Judicial District: 46

Date Documents Received: January 9, 2006

Date Notice of Appeal Filed: January 3, 2006

Order Type: Order Entered

OTN:

Judge: Ammerman, Fredric J.
President Judge

Lower Court Docket No.: No. 03-135-CD

ORIGINAL RECORD CONTENTS

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

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
January 9, 2006	Notice of Appeal Filed	Appellant	Morton Buildings, Inc.
January 9, 2006	Docketing Statement Exited (Civil)		Western District Filing Office

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

DAVID J. KARCEWSKI, :
an adult individual, :
Plaintiff :
:
vs. : No. 03 - 135 - CD
:
MORTON BUILDINGS, INC., :
an Illinois Corporation, :
Defendant :
:

CERTIFICATE OF SERVICE

Filed on behalf of:
Defendant

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

JAN 10 2008
6/10:55 AM

William A. S...
Prothonotary/Clerk of Court

NO 4/6

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(X) 31

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

DAVID J. KARCEWSKI,	:	
an adult individual,	:	
Plaintiff	:	
	:	
vs.	:	No. 03 – 135 – CD
	:	
MORTON BUILDINGS, INC.,	:	
an Illinois Corporation,	:	
Defendant	:	

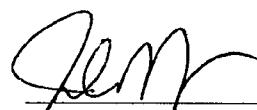
CERTIFICATE OF SERVICE

This is to certify that I have served a certified copy of Statement of Matters Complained of filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above-captioned matter on the following parties in the manner set forth below on the 10th day of January, 2006:

The Honorable Fredric J. Ammerman
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
Via Hand Delivery

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
Attorney for Plaintiff
Via First Class United States Mail, Postage Prepaid

BELIN & KUBISTA



John R. Ryan
Attorney for Defendant

CLEARFIELD, PENNSYLVANIA 16830

P. O. BOX 1

15 NORTH FRONT STREET

ATTORNEYS AT LAW

BELIN & KUBISTA

Prothonotary/Clerk of Courts
William A. Sherry

JAN 10 2006

FILED

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

DAVID J. KARCEWSKI, an adult individual,	:
Plaintiff	:
vs.	No. 03 - 135 - C.D.
MORTON BUILDINGS, INC., an Illinois corporation,	:
Defendant	:

**STATEMENT OF MATTERS
COMPLAINED OF PURSUANT TO
Pa. R.A.P. RULE 1025(b)**

Filed on behalf of:
Defendant

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED 5CC
01/09/2006 Atty R. Ryan
JAN 09 2006
LCK
William A. Shaw
Prothonotary/Clerk of Courts
(st 3)

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

DAVID J. KARCEWSKI,	:
an adult individual,	:
Plaintiff	:
	:
vs.	:
	No. 03 – 135 – C.D.
	:
MORTON BUILDINGS, INC.,	:
an Illinois corporation,	:
Defendant	:

STATEMENT OF MATTERS COMPLAINED OF
PURSUANT TO Pa.R.A.P. 1925 (b)

NOW COMES, Morton Buildings, Inc, Defendant above named, and by its Attorneys, Belin & Kubista, files its Statement of Matters Complained Of pursuant to Pennsylvania Rule of Appellate Procedure 1925 (b) as follows:

1. The trial court committed an error of law in permitting Plaintiff's expert witness, Brooks Harris, to express his opinion on the issue of liability, where the written reports authored by Harris and provided in discovery did not address the issue of liability, but were limited to the issue of damages.
2. The trial court committed an abuse of discretion in ignoring, or failing to give appropriate weight, to the expert testimony of Defendant's witness Walter Schneider and by accepting the testimony of Plaintiff's expert Brooks Harris where it conflicted with that of Schneider.
3. The trial court's finding that Defendant was liable for breach of contract by failing to construct the concrete floor in a good and workmanlike manner, thereby rendering the floor unfit for its intended purpose, is unsupported by the

evidence, where Plaintiff admitted that he designed the floor, including the placement of the drains, where Plaintiff admitted that he was advised by Defendant that Plaintiff's design would require him to manually push fluids to the trench drain, and where Plaintiff nonetheless insisted on the construction pursuant to his design.

4. In the alternative, the trial court's finding that the appropriate remedy for the Defendant's breach of contract was total removal and replacement of the floor was not supported by the evidence, where the court was provided with unequivocal testimony by a qualified expert that there were other less drastic remedies available.
5. The trial court abused its discretion in determining the amount of damages awarded to Plaintiff, where the Defendant presented clear and unequivocal testimony from a qualified expert that showed that the amount of damages claimed by Plaintiff were not reasonable since there were less drastic solutions available.

Respectfully submitted,

BELIN & KUBISTA



John R. Ryan
Attorney for Defendant

CLEARFIELD, PENNSYLVANIA 16830
P.O. BOX 1
15 NORTH FRONT STREET
ATTORNEYS AT LAW
BELLIN & KUBISTA

FILED

JAN 09 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID KARCEWSKI,
an adult individual,
Plaintiff

*

*

*

vs.
MORTON BUILDINGS, INC.,
an Illinois Corporation,
Defendant

* NO. 03-135-CD

*

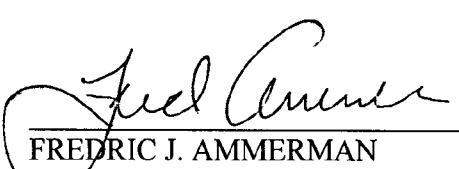
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*

ORDER

NOW, this 5th day of January, 2006, the Court having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Morton Buildings, Inc., Appellant, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

BY THE COURT,


FREDRIC J. AMMERMAN

President Judge

FILED 1cc
01/22/2006 Atty. Noble
JAN 06 2006 Ryan
W.A. Shaw

William A. Shaw
Prothonotary/Clerk of Courts

Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

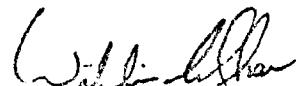
Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,



William A. Shaw
Prothonotary

DATE: 11/10/06

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s)/Attorney(s)

 Defendant(s)/Attorney(s)

 Other

 Special Instructions:

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

DAVID KARCEWSKI, :
an adult individual, :
Plaintiff :
vs. : No. 03 - 135 - CD
: :
MORTON BUILDINGS, INC., :
an Illinois Corporation, :
Defendant :
:

REQUEST FOR TRANSCRIPT

Filed on behalf of:
Defendant

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED 7CC
01/25/2006 Atty Ryan
JAN 03 2006
(6x)

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID J. KARCEWSKI,	:	
an adult individual,	:	
Plaintiff	:	
vs.	:	No. 03 – 135 – CD
MORTON BUILDINGS, INC.,	:	
an Illinois Corporation,	:	
Defendant	:	

REQUEST FOR TRANSCRIPT

A Notice of Appeal having been filed in this matter, the official court reporter is hereby ordered to produce, certify and file the transcript of the trial in this matter, which took place on August 2 and August 3, 2005, in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

BELIN & KUBISTA



John R. Ryan, Esquire
Attorney for Defendant

CLEARFIELD, PENNSYLVANIA 16830

16 NORTH FRONT STREET

ATTORNEYS AT LAW

BELIN & KUBISTA

D-30X1

FILED

JAN 03 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID KARCEWSKI, :
an adult individual, :
Plaintiff :
vs. : No. 03 - 135 - CD
MORTON BUILDINGS, INC., :
an Illinois Corporation, :
Defendant :
:

NOTICE OF APPEAL

Filed on behalf of:
Defendant

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED Atty pd 045.00
01/25/2006 600 Atty
JAN 03 2006 600 Atty
100 & C.R. for
William A. Shaw
Prothonotary/Clerk of Courts
60.00 to
Superior Ct.
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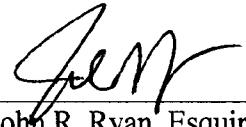
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID J. KARCEWSKI,	:
an adult individual,	:
Plaintiff	:
vs.	No. 03 – 135 – CD
MORTON BUILDINGS, INC.,	:
an Illinois Corporation,	:
Defendant	:

NOTICE OF APPEAL

Notice is hereby given that Morton Buildings, Inc., Defendant above named, hereby appeals to the Superior Court of Pennsylvania from the Order entered in this matter on the 16th day of December, 2005. This Order has been entered in the docket as evidenced by the attached copy of the docket entry.

BELIN & KUBISTA



John R. Ryan, Esquire
Attorney for Defendant

Date: 12/28/2005

Berfield County Court of Common Plea

User: BHUDSON

Time: 02:49 PM

Page 1 of 2

ROA Report

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date		Judge
02/03/2003	Filing: Civil Complaint Paid by: Noble, Theron G. (attorney for Karczewski, David J.) Receipt number: 1854931 Dated: 02/03/2003 Amount: \$85.00 (Check) 3 Cert. to Atty.	No Judge
02/07/2003	Acceptance of Service, Complaint accepted on behalf of Defendant Morton Buildings, Inc., filed by s/John R. Ryan, Esq. No CC	No Judge
02/24/2003	Answer, New Matter and Counterclaim. filed by s/John R. Ryan, Esquire Verification s/Bill Shanahan, Manager 2 cc Atty Ryan	No Judge
03/14/2003	Reply To New Matter and Answer To Counter-Claim. filed by s/Theron G. Noble, Esquire Notice of Service no cc	No Judge
03/19/2003	Verification. s/David J. Karczewski Notice of Service no cc	No Judge
04/23/2003	Certificate of Service, Notice of Deposition upon: Defendant via Defendant's Attorney. filed by s/John R. Ryan, Esq. no cc	No Judge
11/24/2003	Notice of Service, Plaintiff's First Set Of Discovery Materials upon: JOHN R. RYAN, ESQUIRE filed by, s/THERON G. NOBLE, ESQUIRE no cc	No Judge
01/28/2004	Motion to Compel, filed by Atty. Noble no cert. copies.	No Judge
02/02/2004	RULE TO SHOW CAUSE, NOW, this 27th day of January, 2004, issued upon the DEFENDANT. RULE RETURNABLE, for filing Written Response, is set for the 19th day of Feb. 2004 and Argument on the Petition set for the 23rd day of February, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 2 cc to Atty Noble	Fredric Joseph Ammerman
02/09/2004	Notice of Service, Rule To Show Cause upon John R. Ryan, Esquire filed by, s/Theron G. Noble, Esq. no cc	Fredric Joseph Ammerman
02/13/2004	Answer of Defendant to Motion to Compel, filed by Atty. Ryan 3 Cert. to Atty.	Fredric Joseph Ammerman
	Certificate of Service, filed by Atty. Ryan Served copy of Defendant's Answer to Plaintiff's Motion to Compel on Atty. Noble	Fredric Joseph Ammerman
02/25/2004	ORDER, NOW, this 23rd day of February, 2004, following Argument on Plaintiff's Motion to Compel, the Motion is DENIED in regard to Interrogatories 8,9,10,15,16,22,23,24, and 26. The Motion to Compel is GRANTED in regard to Interrogatory 11. Defendant shall have no more than 45 days from this date to provide a more specific response to Interrogatory 11. by the Court, s/FJA, P.J. 1 cc Atty Noble, Ryan	Fredric Joseph Ammerman
03/08/2005	Certificate of Readiness For Non-Jury Trial, filed by s/ John R. Ryan Esquire. no CC	Fredric Joseph Ammerman
04/27/2005	Order, AND NOW, this 26th day of April, 2005, it is the ORDER of the Court that a Pre-Trial Conference shall be held on the 13th day of May, 2005, in Chambers at 2:00 p.m. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. CC to Attys Noble & Ryan	Fredric Joseph Ammerman
07/21/2005	Order, this 20th day of July, 2005, it is the Order of the Court that Civil Non-Jury Trial has been scheduled for Tuesday, August 2, 2005 and Wednesday, August 3, 2005 at 9:00 a.m. each day in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman
08/04/2005	Order, this 3rd day of August, 2005, following conclusion of civil nonjury trial, it is the Order of this Court that counsel for Plaintiff provide the Court with brief within no more than 20 days from today's date; and upon receipt of Plaintiff's brief, counsel for Defendant shall have 20 days thereafter to respond in kind. By The Court, /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman

Date: 12/28/2005

Time: 02:49 PM

Page 2 of 2

Dearfield County Court of Common Pleas

ROA Report

Case: 2003-00135-CD

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Judge
11/09/2005	Order NOW, this 8th day of November 2005, following nonjury trial and the receipt of the parties briefs, it is the finding and ORDER of this Court as follows: 1. the Court finds that the Defendant has breached the contract entered into between the parties by not constructing the cement floor in a good and workmanlike manner, see original for details. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty: Noble and Ryan.
11/17/2005	Motion For Post-Trial Relief, filed by s/ John R. Ryan, Esquire. 4CC Atty. Fredric Joseph Ammerman Ryan
11/21/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC. in the above captioned matter on the following party on the 18th day of November 2005 to Theron G. Noble Esq. filed by s/ John R. Ryan Esq. No CC. Order AND NOW, this 18th day of November, 2005, upon consideration of the foregoing Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that said Motion be scheduled for Argument the 16th day of December, 2005, at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Ryan.
11/23/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on Theron G. Noble Esq on the 18th day of November, 2005 filed by s/ John R. Ryan Esq. No CC.
12/15/2005	Order AND NOW, this 9th day of December, 2005, counsel for both parties having indicated that they wish to waive oral argument on the Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that the Argument scheduled for December 16, 2005 at 11:00 a.m. be and is hereby cancelled. The Court will issue its ruling on Motion for Post-Trial without argument. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty: Noble, and Ryan.
12/19/2005	Order NOW, this 16th day of December, 2005, it is the ORDER of this Court that the Defendant's Motion for Post Trial Relief filed November 17, 2005 be and is hereby DISMISSED. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty: Noble and Ryan.
12/28/2005	Filing: Praeclipe for Entry of Judgment Paid by: Ryan, John R. (attorney for Fredric Joseph Ammerman Morton Buildings, Inc.) Receipt number: 1911832 Dated: 12/28/2005 Amount: \$20.00 (Check) Judgment is entered in favor of the Plaintiff and against the Defendant. Two CC Attorney Ryan Notice to Attorneys Ryan and Noble

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

DEC 28 2005

Attest.

William J. Hudson
Prothonotary/
Clerk of Courts

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

DAVID J. KARCEWSKI,	:
an adult individual,	:
Plaintiff	:
vs.	:
	No. 03 - 135 - CD
MORTON BUILDINGS, INC.,	:
an Illinois Corporation,	:
Defendant	:

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below which service satisfies the requirements of Pa.R.A.P. 121:

Service by first class mail addressed as follows:

Theron G. Noble, Esq. (814) 765- 4990
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16930
(Counsel for David J. Karczewski)

Service in person as follows:

The Honorable Fredric J. Ammerman (814) 765-2641
Judges Chambers
Clearfield County Courthouse
Clearfield, PA 16830

Clearfield County Court Reporter (814) 765-2641
Clearfield County Courthouse
Clearfield, PA 16830

Dated: 1/3/06


John R. Ryan, Esq.

Attorney ID No. 38739

Belin & Kubista

15 North Front Street

P.O. Box 1

Clearfield, PA 16930

Counsel for Morton Buildings, Inc.

(814) 765- 8972

CLEARFIELD, PENNSYLVANIA 16830

P. O. BOX 1
15 NORTH FRONT STREET
ATTORNEYS AT LAW
BELIN & KUBISTA

FILED

JAN 03 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID J. KARCEWSKI,
an adult individual,

PLAINTIFF,

v.

MORTON BUILDINGS, INC.,

DEFENDANT.

DEC 29 2005
M/2:45 P.M.
Prothonotary Clerk of Courts
No C/C
No Tch To Atty
Ryke

No. 03- 135 -CD

Type of Pleading:

**PRAECIPE TO ENTER
JUDGMENT**

Filed By:

Plaintiff

Counsel of Record:
THERON G. NOBLE, ESQUIRE
FERRARACCIO & NOBLE
301 EAST PINE STREET
CLEARFIELD, PA 16830
(814)375-2221
PA I.D.No.: 55942

26

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

DAVID J. KARCEWSKI,)
an adult individual,)
PLAINTIFF,)
v.) No. 03- 135 -CD
MORTON BUILDINGS, INC.,)
DEFENDANT.)

PRAECIPE TO ENTER JUDGMENT

To: William A. Shaw, Prothonotary

Date: December 28, 2005

Pursuant to Pa.R.Civ.P. 227.4(1)(b), please enter judgment in favor of Plaintiff, David J. Karczewski, and against Defendant Morton Buildings, Inc., in the amount of \$26,175, plus interest and costs.

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiff
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

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

DAVID J. KARCEWSKI,)
an adult individual,)
PLAINTIFF,)
v.) No. 03- 135 -CD
MORTON BUILDINGS, INC.,)
DEFENDANT.)

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this
28th day of December, 2005, that I did serve a true and correct copy
of Plaintiff's PRAECIPE TO ENTER JUDGMENT to the below indicated person, being
counsel of record for the Defendant, via United States Mail, postage prepaid, first class:

John R. Ryan, Esquire
Belin & Kubista
P.O. Box 1
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

David J Karczewski

Vs.

No. 2003-00135-CD

Morton Buildings, Inc.

To: DEFENDANT(S)

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$26,175.00 on the December 29, 2005.

William A. Shaw
Prothonotary

William A. Shaw

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

DAVID J. KARCEWSKI, :
Plaintiff :
vs. :
: No. 03 - 135 - CD
MORTON BUILDINGS, INC. :
Defendant :
:

**PRAECIPE FOR ENTRY OF
JUDGMENT**

Filed on behalf of:
Defendant

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

Atty Ryan pd.
2000
02/37/01
DEC 28 2005 2CC Atty Ryan

Notice to Atty Noble
Prothonotary, Clerk of Courts

Atty Ryan
(317)

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

DAVID J. KARCEWSKI,	:	
Plaintiff	:	
	:	
vs.	:	No. 03 - 135 - CD
	:	
MORTON BUILDINGS, INC.	:	
Defendant	:	

PRAECIPE FOR ENTRY OF JUDGMENT

TO THE PROTHONOTARY:

Pursuant to Pennsylvania Rule of Civil Procedure 227.4 (2), please enter Judgment in favor of the Plaintiff and against the Defendant.

BELIN & KUBISTA

December 27, 2005



John R. Ryan, Esquire
Attorney for Defendant

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

DAVID J. KARCEWSKI, :
an adult individual, :
Plaintiff :
vs. : No. 03 – 135 – CD
: :
MORTON BUILDINGS, INC., :
an Illinois Corporation, :
Defendant :
:

NOTICE OF PRAECIPE FOR JUDGMENT

Pursuant to Pennsylvania Rule of Civil Procedure 237, I hereby certify that I have mailed a true and correct copy of the Praecipe for Entry of Judgment in the above captioned matter to Theron G. Noble, Esquire, Counsel for David J. Karczewski, Plaintiff above named.

BELIN & KUBISTA

December 28, 2005



John R. Ryan, Esquire
Attorney for Defendant

BEELIN & KUBISTA

CLEARFIELD, PENNSYLVANIA 16830

15 NORTH FRONT STREET

ATTORNIES AT LAW

P.O. BOX 1

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

David J Karczewski

Vs.

No. 2003-00135-CD

Morton Buildings, Inc.

To: Morton Buildings, Inc.

NOTICE is given that a JUDGMENT in the above captioned matter has been entered
against you on December 28, 2005.

William A. Shaw
Prothonotary

William A. Shaw

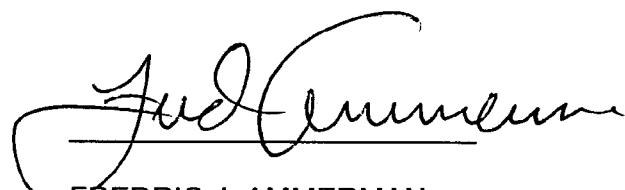
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID J. KARCEWSKI, *
Plaintiff *
vs. * NO. 03-135-CD
MORTON BUILDINGS, INC., *
Defendant *

ORDER

NOW, this 16th day of December, 2005, it is the ORDER of this Court that the
Defendant's Motion for Post Trial Relief filed November 17, 2005 be and is hereby
DISMISSED.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

0/3/2005 ^{ICC} Atty Noble
DEC 19 2005 ^{UN} Ryan

AMERICAN
COURT REPORTERS
1-800-333-1111

Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,



William A. Shaw
Prothonotary

DATE: 12-19-05

You are responsible for serving all appropriate parties.

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

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

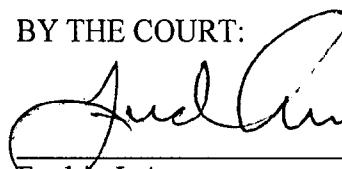
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID J. KARCEWSKI, :
an adult individual, :
Plaintiff :
vs. :
: No. 03 - 135 - C.D.
MORTON BUILDINGS, INC., :
Defendant :
:

ORDER

AND NOW, this 9th day of December, 2005, counsel for both parties having indicated that they wish to waive oral argument on the Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that the Argument scheduled for December 16, 2005, at 11:00 a.m. be and is hereby cancelled. The Court will issue its ruling on Motion for Post-Trial Relief without argument.

BY THE COURT:



Fredric J. Ammerman
Judge

100 Atlys. Nodle
Ryan
19:23:37
DEC 15 2005
Pittsburgh, PA
15222
172

Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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

Sincerely,



William A. Shaw
Prothonotary

You are responsible for serving all appropriate parties.

1215105 The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

DAVID J. KARCEWSKI,	:	
Plaintiff	:	
VS.	:	NO. 03 - 135 - C.D.
MORTON BUILDINGS, INC.,	:	
Defendant	:	

CERTIFICATE OF SERVICE

Filed on behalf of:
Defendant

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

NOV 23 2005
10:30 AM
William A. Shaw
Prothonotary/Clerk of Courts
w/c/c

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

DAVID J. KARCEWSKI,	:	
Plaintiff	:	
	:	
VS.	:	NO. 03 – 135 – C.D.
	:	
MORTON BUILDINGS, INC.,	:	
Defendant	:	

CERTIFICATE OF SERVICE

This is to certify that I have served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on the following party by postage prepaid first-class United States mail, on the 18th day of November, 2005:

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

BELIN & KUBISTA


John R. Ryan
Attorney for Defendant

CLEARFIELD, PENNSYLVANIA 16830
P. O. BOX 1
15 NORTH FRONT STREET
ATTORNEYS AT LAW
BELIN & KUBISTA

6/2/2003

NOV 3 2003
PAUL J. KUBISTA
ATTORNEY AT LAW
BELLIN & KUBISTA
CLEARFIELD, PENNSYLVANIA 16830

CA

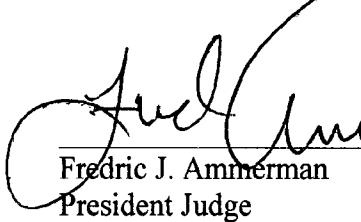
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID J. KARCEWSKI, :
Plaintiff :
: :
vs. : No. 03 - 135 - C.D.
: :
MORTON BUILDINGS, INC., :
Defendant :
: :

ORDER

AND NOW, this 18 day of November, 2005, upon consideration of the foregoing Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that said Motion be scheduled for Argument the 16th day of December, 2005, at 11:00 o'clock A.M. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:


Fredric J. Ammerman
President Judge

3CC
01/07/2006 NOV 21 2005 Arty Ryan
William A. Shaw
Prothonotary/Clerk of Courts

Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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

Sincerely,



William A. Shaw
Prothonotary

You are responsible for serving all appropriate parties.

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

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

DAVID J. KARCEWSKI, :
Plaintiff :
VS. : NO. 03 - 135 - C.D.
MORTON BUILDINGS, INC., :
Defendant :
:

CERTIFICATE OF SERVICE

Filed on behalf of:
Defendant

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

10:58 AM NO
NOV 21 2003
61

William A. Shaw
Honorary Clerk of Courts

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

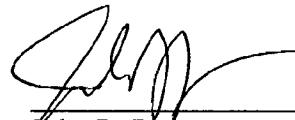
DAVID J. KARCEWSKI,	:	
Plaintiff	:	
	:	
VS.	:	NO. 03 – 135 – C.D.
	:	
MORTON BUILDINGS, INC.,	:	
Defendant	:	

CERTIFICATE OF SERVICE

This is to certify that I have served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on the following party by postage prepaid first-class United States mail, on the 18th day of November, 2005:

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

BELIN & KUBISTA



John R. Ryan
Attorney for Defendant

CLEARFIELD, PENNSYLVANIA 16830

P. O. BOX 1

15 NORTH FRONT STREET

ATTORNEYS AT LAW

BELIN & KUBISTA

MOV 212005
SEARCHED
INDEXED
SERIALIZED
FILED

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

DAVID J. KARCEWSKI, Plaintiff	:	
	:	
vs.	:	No. 03 - 135 - C.D.
	:	
MORTON BUILDINGS, INC., Defendant	:	
	:	

MOTION FOR POST-TRIAL RELIEF

Filed on behalf of:
Defendant

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

4CC Atty Ryan
of 3:01 AM
NOV 17 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID J. KARCEWSKI,	:	
Plaintiff	:	
	:	
vs.	:	No. 03 – 135 – C.D.
	:	
MORTON BUILDINGS, INC.,	:	
Defendant	:	

MOTION FOR POST-TRIAL RELIEF

NOW COMES, Morton Buildings, Defendant above named, and by its Attorneys, Belin & Kubista, moves the Court for Post-Trial Relief pursuant to Pennsylvania Rule of Civil Procedure 227.1 and avers in support thereof as follows:

1. The Court erred in permitting the Plaintiff's expert witness, Brooks Harris, to express his opinion in the issue of liability, where the written reports authored by Harris did not address the issue of liability, but were limited to the issue of damages. The grounds for this portion of the Motion were perfected at the time of trial by a timely objection by Defendant's counsel, which was overruled by the Court. It is believed that the Court's ruling thereon was error. Copies of the relevant reports are attached hereto and marked Exhibit "A".
2. The Court abused its discretion in ignoring the expert testimony of Defendant's witness Walter Schneider, in that:
 - a. The evidence showed that Schneider was more experienced, more credible, and more knowledgeable as to the matters on which he testified than was Brooks Harris;

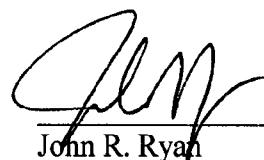
- b. Schneider presented credible and unequivocal testimony as to the issue of liability, as well as to the appropriate remedy in the event that the Court determined that Defendant was liable;
 - c. While the Court has discretion in matters of credibility of any witness, it is respectfully submitted that to accept the testimony of Harris over that of Schneider represents an abuse of that discretion.
- 3. The Court's finding that the Defendant was liable for breach of the contract by failing to construct the concrete floor in a good and workmanlike manner thereby rendering the floor unfit for the intended purpose is unsupported by the evidence, where Plaintiff admitted that he designed the floor, including the placement of the drains, where Plaintiff admitted that he was advised by Defendant that the placement would result in Plaintiff would have to push fluids to the trench drain, and where Plaintiff nonetheless insisted on the construction of the floor pursuant to his design.
- 4. In the alternative, Defendant submits that the Court's finding that the appropriate remedy for the Defendant's breach of contract is removal and replacement of the floor is unsupported by the evidence and therefore is an abuse of discretion, in that:
 - a. There is unequivocal testimony from Defendant's witness Schneider that there are other, less drastic, remedies available which would not involve removal of the entire floor and which would avoid the need for the loss of income in shutting down Plaintiff's business;

- b. Plaintiff's witness, Brooks Harris, offered equivocal testimony in this regard. For example, he stated he was "not sure" that adding a central drain would weaken the vehicle lifts, where Schneider clearly stated that it would not.
5. The Court abused its discretion in determining the damages awarded to Plaintiff. Defendant offered clear and unequivocal testimony from an experienced expert in the field of structural engineering to state that the remedies would not require removal and replacement of the floor, and that there was no reason to shut down the business for the fifteen (15) weeks found by the Court to be appropriate. Accordingly, the damages as found by the Court are unsupported by credible and competent evidence.

WHEREFORE, Defendant requests that the Court grant the following relief:

1. Vacate its Order of November 8, 2005 and grant a new trial;
2. In the alternative, vacate its Order of November 8, 2005, and grant judgment in favor of the Defendant on Plaintiff's Complaint, and judgment in favor of the Defendant on its Counterclaim.

BELIN & KUBISTA



John R. Ryan
Attorney for Defendant



October 8, 2003

Kars Transmission Center
Mr. David Karczewski
4225 Morrisdale / Allport Highway
Morrisdale, PA 16858

Re: Site Inspection

Dear Mr. Karczewski:

I have reviewed the information you have supplied us consisting of: Belin and Kubista Letter, dated April 1, 2003, Hrenko Insurance Agency Letter, dated May 19, 2003, Morton Buildings Mechanical, Plumbing, and Electrical Plans, sheet number ME1, dated 2.06.02, materials supplied by Mohawk Resources Ltd., and Official Inspection Station Requirements-Subchapter B. In addition I visually inspected the site on September 26, 2003.

In response to the proposals submitted by Morton Buildings, Inc (from Belin and Kubista letter dated April 1, 2003) the following recommendations are given:

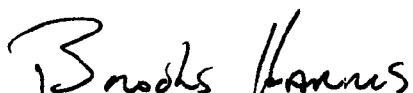
1. A single 4" square floor drain and associated 1-1/2" PVC conveyance pipe would not provide adequate drainage. A system of this caliber would have a great tendency to clog with oils and debris associated with your type of work. This system would not provide adequate accessibility to the line to clean (remove debris). Furthermore we do not feel that this system could provide positive slope to the existing trench drain since the bottom of the drain would most likely be placed below the bottom of the trench drain. Even if clogging did not occur the water would have a tendency to pond and not flow into the trench drain. It is unclear how the valve would work. The cutting and disruption of the concrete in the vicinity of the lifts has the potential to create an unstable base for the lifts. Mohawk gives strict guidelines for the concrete pad supporting the lifts. By cutting the floor between the lifts the reduced pad size may not meet the manufacturer's specifications.
2. This option has similar implications as the previous option. From a conveyance standpoint the bottom of the proposed trench drains would probably be lower than the existing one, creating undesired ponding. The integrity of the concrete pads for the lifts would be more severely impacted than the first option. Safety concerns as stated by Hrenko Insurance Agency, Inc. should also be considered.

3. As stated by Hrenko this option could prevent you from installing a third lift in the garage. Again, this system would not have sufficient capacity and would have a great potential to clog without any way of removing the debris. Will Morton Buildings pay for and install the new oil separator?

It is our opinion that grinding and re-surfacing the floor with a veneer layer (to produce the 1% slope) will not solve the drainage problem and provide the structural stability required by the lift's manufacturer. The grinding and veneer surfacing will not provide the required structural stability and integrity for the lifts, and will have a tendency to exfoliate in weak bonded areas. Removal of the entire floor versus cutting around the office is recommended. The slope of the floor needs to be 1% max front to back to meet the drainage requirements. The contractor may not be able to match the cut line around the office and meet the 1% max slope. This option could create a "ridge line" at the office door. The floor should have been constructed with appropriate slope to provide drainage to the trench drain as designed. Therefore we recommend that the entire floor be removed and replaced with the appropriate slope and structural requirements as provided by the lift's manufacturers.

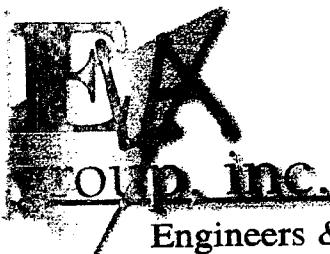
Please do not hesitate to contact me with any comments or questions.

Sincerely,
ELA GROUP, INC.



Brooks Harris, P.E.
Project Engineer

F:\M\Word\Project_Folders\SC115-001\Kars Transmission Center\Response.DOC



Engineers & Landscape Architects

October 17, 2003

Kars Transmission Center
Mr. David Karczewski
4225 Morrisdale / Allport Highway
Morrisdale, PA 16858

Re: Construction Timeline Estimation

Dear Mr. Karczewski:

An initial estimate of the time required for the improvements as recommended by us in our letter dated October 8, 2003 is as follows:

Three weeks for pre-demolition work including, but not limited to:

- Removing equipment, lifts, tools, shop sinks, tool chests, etc.,
- Removing lobby, office, and bathroom facilities, including wiring, plumbing, etc.,
- Installing protective measures for the walls and ceiling.

Seven weeks for concrete work including, but not limited to:

- Removing existing concrete,
- Re-set the subbase,
- Pouring and curing of concrete (28 day strength required for lifts),
- Epoxy coating (the epoxy seal cannot be applied to concrete less than 45 days old).

Five weeks for shop set-up including, but not limited to:

- Installing equipment, lifts, tools, shop sinks, tool chests, etc.,
- Installing lobby, office, and bathroom facilities, including wiring, plumbing, etc.

One week should also be budgeted for contingencies including, but not limited to:

- Downtime (time between contractors on site),
- Unforeseen circumstances,
- Weather.

It is our estimate that this project, as recommended in our letter dated October 8, 2003 will take approximately sixteen (16) weeks. Please do not hesitate to contact me with any comments or questions.

Sincerely,
ELA GROUP, INC.

Brooks Harris, P.E.

Project Engineer

F:\MSWord\Project Folders\SC135-001 Kars Transmission Center\Timeline.doc

ELA Group, Inc.

2013 Sandy Drive, Suite 103 • State College, PA 16803
(814) 861-6328 • FAX (814) 861-5503

www.elagroup.com

Corporate Headquarters: Lititz, PA

BELIN & KUBISTA

ATTORNEYS AT LAW

CLEARFIELD, PENNSYLVANIA 16830

15 NORTH FRONT STREET

P. O. BOX 1

44

FILED

NOV 17 2005

William A. Spray

Prothonotary Clerk of Courts

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

DAVID J. KARCEWSKI,
Plaintiff
MORTON BUILDINGS, INC.,
Defendant

*
*
*
*
*

NO. 03-135-CD

012-2732
NOV 09 2005
①

2005 Atlys Noble
Ryan

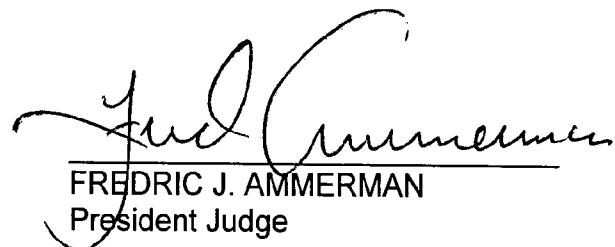
ORDER

NOW, this 8th day of November, 2005, following nonjury trial and the receipt of the parties briefs, it is the finding and ORDER of this Court as follows:

1. The Court finds that the Defendant has breached the contract entered into between the parties by not constructing the cement floor in a good and workmanlike manner, thereby rendering the floor not reasonably fit for the intended purpose;
2. The Court finds that the appropriate remedy is for the existing floor to be removed and replaced. Damages related thereto as established by the evidence are as follows:
 - a) \$27,950.00 to replace the cement floor.
 - b) Due to the interruption of his business activities, Plaintiff will suffer loss of profits and unrecoverable costs and expenses in the amount of \$10,464.00 per month, or \$2,415.00 per week.
 - c) The Court finds it will reasonably take fifteen (15) weeks to complete the repairs, making Plaintiff's total loss of profits and unrecoverable costs and expenses the amount of \$36,225.00. (15 weeks x \$2,415.00)
 - d) Plaintiff's total damage award is \$64,175.00.

3. Plaintiff agrees that he did not pay the final payment due under the contract in the amount of \$38,000.00, and that this amount should be offset against any verdict in favor of the Plaintiff.
4. Total verdict entered in favor of the Plaintiff is \$26,175.00.
5. The Court will issue a separate order to case No. 02-1760-CD dismissing the Defendant's Mechanics Lien.
6. Defendant's Counterclaim is dismissed.
7. Opinion to be filed in the event of an Appeal.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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

Sincerely,



William A. Shaw
Prothonotary

You are responsible for serving all appropriate parties.

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

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

DAVID J. KARCEWSKI

:

VS.

: NO. 03-135-CD

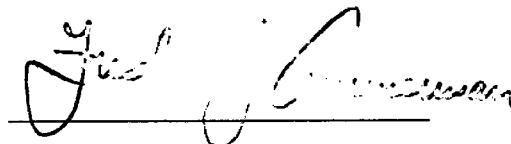
MORTON BUILDINGS, INC.

:

O R D E R

NOW, this 3rd day of August, 2005, following conclusion of civil nonjury trial, it is the ORDER of this Court that counsel for Plaintiff provide the Court with brief within no more than twenty (20) days from today's date; and, upon receipt of Plaintiff's brief, counsel for Defendant shall have twenty (20) days thereafter to respond in kind.

BY THE COURT,



President Judge

④
ICC Atlys
013:2384
AUG 6 2005
Noble
Ryan

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

DAVID J. KARCEWSKI,
Plaintiff

*
*
*

vs.

* NO. 03-135-CD

*

MORTON BUILDINGS, INC.,
Defendant

*

ORDER

NOW, this 20th day of July, 2005, it is the ORDER of the Court that Civil Non-Jury Trial in the above-captioned matter has been scheduled for Tuesday, August 2, 2005 and Wednesday, August 3, 2005 at 9:00 A.M. each day in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

68
100
ciq:84301 Atty's:
JUL 21 2005 mobile
Ryan

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

DAVID J. KARCEWSKI, :
Plaintiff :
: :
vs. : NO. 03-135-CD
: :
MORTON BUILDINGS, INC., :
Defendant :
:

O R D E R

AND NOW, this 26th day of April, 2005,, it is
the ORDER of the Court that a Pre-Trial Conference in the
above matter shall be held on the **13th day of May, 2005, in**
Chambers at 2 o'clock p.m.

BY THE COURT,



FREDRIC J. AMMERMAN

President Judge

APR 27 2005
0/3:30/05
W. Shaw

Prothonotary/Clerk of Courts
CENT TO ATTYS

NEBKE
&
ZYOU

(X)
NO
CC
03/29/03
10/8/2003

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

CASE NUMBER	TYPE	TRIAL REQUESTED	DATE PRESENTED
			ESTIMATED TRIAL TIME
03-135-CD	() Jury (X) Non-Jury		
Date Complaint Filed: 2/8/03	() Arbitration		2 Days

PLAINTIFF(S)

David J. Karczewski ()

DEFENDANT(S)

Morton Buildings, Inc. () Check Block if
a Minor is a
Party to the
Case

~~NOTICE OF COUNTERCLAIM~~ (COUNTERCLAIM):

Morton Buildings, Inc. vs. David J. Karczewski ()

JURY DEMAND FILED BY:

N/A

DATE JURY DEMAND FILED:

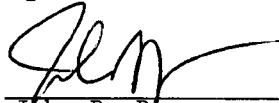
N/A

AMOUNT AT ISSUE CONSOLIDATION DATE CONSOLIDATION ORDERED

more than
\$ 25,000.00 (X) yes () no

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.



John R. Ryan

Theron G. Noble, Ferraraccio & Noble

(814) 765-4990

FOR THE PLAINTIFF

TELEPHONE NUMBER

John R. Ryan, Belin & Kubista

(814) 765-8972

FOR THE DEFENDANT

TELEPHONE NUMBER

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DAVID J. KARCEWSKI : :

VS. : NO. 03-135-CD

MORTON BUILDINGS, INC. : :

O R D E R

NOW, this 23rd day of February, 2004, following argument on the Plaintiff's Motion to Compel, the Motion is denied in regard to Interrogatories 8, 9, 10, 15, 16, 22, 23, 24 and 26. The Motion to Compel is granted in regard to Interrogatory 11. Defendant shall have no more than forty-five (45) days from this date to provide a more specific response to Interrogatory 11.

BY THE COURT,



President Judge

FILED

FEB 25 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED
1/30/04
FEB 25 2004
William A. Shaw
Prothonotary, Clerk of Courts
100
Atty Nable
Atty Ryan
GPO

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

DAVID J. KARCEWSKI, an adult individual, Plaintiff	:	
vs.	:	No. 03 – 135 - C.D.
MORTON BUILDINGS, INC., an Illinois corporation, Defendant	:	

CERTIFICATE OF SERVICE

Filed on behalf of:
Defendant

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

FEB 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

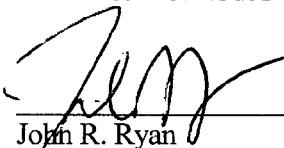
DAVID J. KARCEWSKI,	:	
an adult individual,	:	
Plaintiff	:	
	:	
vs.	:	No. 03 - 135 - C.D.
	:	
MORTON BUILDINGS, INC.,	:	
an Illinois corporation,	:	
Defendant	:	

CERTIFICATE OF SERVICE

This is to certify that I have served a certified copy of Defendant's Answer to Plaintiff's Motion to Compel in the above captioned matter on the following person by first class United States mail, on the 13th day of February, 2004:

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

BELIN & KUBISTA



John R. Ryan

Attorney for Defendant Morton Buildings, Inc.

ATTOURNEYS AT LAW

15 NORTH FRONT STREET

CLARFIELD, PENNSYLVANIA 16830

P.O. BOX 1

BELIN & KUBISTA

FILED
Clerk
FEB 13 2004

William A. Shaw
Prothonotary Clerk of Court

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

DAVID J. KARCEWSKI, :
an adult individual, :
Plaintiff :
:
vs. : NO. 03 - 135 - C.D.
:
MORTON BUILDINGS, INC., :
an Illinois corporation, :
Defendant :
:

**ANSWER OF DEFENDANT TO
MOTION TO COMPEL**

Filed on behalf of
Defendant

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

FEB 13 2004

William A. Shaw
Prothonotary
(initials)
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID J. KARCEWSKI,	:
an adult individual,	:
Plaintiff	:
vs.	NO. 03 – 135 – C.D.
MORTON BUILDINGS, INC.,	:
an Illinois corporation,	:
Defendant	:

ANSWER OF DEFENDANT TO MOTION TO COMPEL

NOW COMES, Morton Buildings, Inc., Defendant above named, and by its Attorneys, Belin & Kubista, files its Answer to the Plaintiff's Motion to Compel as follows:

1. Admitted.
2. Denied as stated. The Plaintiff contends that the floor is improperly sloped, which results in pooling of water and other liquids in the center of the floor. Defendant admits that a low spot exists on the floor, but has alleged that Plaintiff insisted on the placement of a trench drain at the entrance of the building as opposed to the center, which causes the failure to drain and that Plaintiff was aware that he would be required to push liquids to the trench drain. The parties have had discussions regarding potential resolutions, none of which have resulted in settlement.
3. Admitted.
4. Admitted.
5. Admitted.

5. (As numbered in Plaintiff's Motion) Defendant admits that liquids pool in the center of the floor and do not run to the trench drain.
6. Defendant admits that an issue has arisen regarding the admissibility of matters discussed by the parties as potential settlement options. Defendant's position, which it believes is in accordance with well-established law and the Rules of Evidence, is that settlement proposals are not admissible as evidence of liability.
7. Admitted.
8. Admitted. Further, Defendant denies Plaintiff's allegations that the floor is rendered dangerous and hazardous.
9. Denied. Plaintiff has posited his interrogatories as requesting prior settlement discussions, apparently for the purpose of trying to establish an admission of liability on the part of Defendant. Plaintiff obviously has the burden of proving liability and cannot use proof of settlement proposals to do so. Assuming Plaintiff can meet his burden of proof as to liability, he then must prove his damages. Defendant believes that the "remedial solution" proposed by Plaintiff's expert is actually his alleged measure of damages. Defendant has the right to dispute liability and at the same time offer evidence to dispute Plaintiff's alleged damages. Defendant does not dispute that the "remedies" proffered by the parties may be admissible as proof of or in defense of Plaintiff's damages in this action, but those "remedies" are not admissible as to the issue of liability.

SPECIFIC OBJECTIONS

ISSUE I: INTERROGATORIES 8 AND 9

10. Admitted. See response to No. 10 herein above.

11. As stated above, the possible resolutions referred to by Plaintiff are not admissible as proof of liability. They may be admissible as proof of and defense to claims of damages. Plaintiff's interrogatories are stated broadly, therefore, Defendant properly stated its objections so as not to waive same at time of trial. Further, Defendant responded by referring to prior disclosures of proposals, which are known to Plaintiff and his counsel, and which were made in an attempt to settle the action.
12. Interrogatories 8 and 9 as stated make no reference as to "when" Defendant admitted anything. Again, Plaintiff has phrased his Interrogatory in terms of seeking an admission of liability by use of settlement proposals. Hence, the objection.
13. Defendant responded by stating that it did make several offers to remedy the low spot in the floor and that its proposals were rejected by Plaintiff. That it why Defendant "failed to remedy the problem."

ISSUE II: INTERROGATORY 11

14. Plaintiff requested that Defendant identify "all persons or entities", who worked on Defendant's behalf in constructing the building. Defendant provided the name of the subcontractor who installed the floor and stated that it was without knowledge as to the names of employees of that subcontractor who may have worked on the floor. The names of other subcontractors not involved in the installation of the floor are not relevant, in that the floor is the sole issue in this action.
15. Admitted.

16. Denied for the reasons set forth at No. 14.

ISSUE III: INTERROGATORIES 15 AND 16

17. Again, Plaintiff has propounded an overly broad request, which is not limited to the issue before the Court. Defendant, in its response to Interrogatory 14, provided a detailed summary of the communications between Plaintiff and Defendant prior to the formation of the contract, and in response to No. 23 described when Defendant was first aware that Plaintiff had a complaint about the floor. To request discovery of every communication between the parties during construction is overly broad and unreasonable.

18. Admitted for the reasons set forth at No. 17.

19. Denied for the reasons set forth at No. 17.

20. Denied for the reasons set forth at No. 17.

21. Denied in that the parties entered into a written contract which speaks for itself as to the obligations of the parties in construction of the building.

22. Denied for the reasons set forth at No. 17.

ISSUE IV: INTERROGATORY 22

23. Admitted.

24. The report supplied by Defendant does in fact address in part the feasibility of Plaintiff's "expert suggestion." Further, Defendant has requested and expects to receive a supplemental report from its expert addressing the feasibility of what Plaintiff terms his "expert suggestion." That report will be provided when received in accordance with the Rule of Civil Procedure. Defendant has

provided Plaintiff with the sole report presently in his possession. The objection was raised for the reasons set forth herein above.

25. Defendant agrees that it has the absolute right to refute Plaintiff's expert position at trial, as said position contains proposed corrective measures relevant to the issue of damages, and as stated above will supply Plaintiff with supplemental expert reports as same are received. Further, Plaintiff's insistence on the use of the term "remedial measures" implies that a condition exists which requires remedy, and by implication, seeks an admission of liability from Defendant which it cannot obtain by use of matters which are part of settlement discussions.
26. Admitted for the reasons stated above.
27. Defendant will identify all such witnesses to the extent it has not already done so. (See response to Interrogatory No. 4)

ISSUE V: INTERROGATORY 24

28. Defendant objects to No. 24 in its entirety for the reasons set forth above.
29. See answer to No. 28 and other responses above.
30. Plaintiff has not supplied Defendant with any opinion, expert or otherwise, that would lead Defendant to the conclusion that its "solutions" are "less than perfect." As stated above, Defendant will supply Plaintiff with any supplement expert report received. Plaintiff is free to depose any witness prior to trial as to the "perfection" of such matters and is free to employ experts to address the "perfection" of lack thereof.

ISSUE VI: INTERROGATORY 26

31. Without waiving any objection, Defendant did in fact, in its response to Interrogatory 26, provide, again, the names of experts which Defendant intends to call in attacking the opinions of Plaintiff's expert. There is nothing further to compel by way of response.

32. See response to No. 31.

ISSUE VII REQUEST FOR PRODUCTION NO. 11

33. No response required.

34. See responses above.

Respectfully submitted,

BELIN & KUBISTA



Attorney for Defendant
Morton Buildings, Inc.

CLIFFARFIELD, PENNSYLVANIA 16830
P.O. BOX 14
15 NORTH FRONT STREET
ATTORNEYS AT LAW
REILIN & KURISTA

FILED

FEB 13 2004

William A. Shaw
Prothonotary

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

DAVID J. KARCEWSKI,)
an adult individual,)
PLAINTIFF,)
v.) No. 03- 135 -CD
MORTON BUILDINGS, INC.,)
an Illinois Corporation;)
DEFENDANT.)

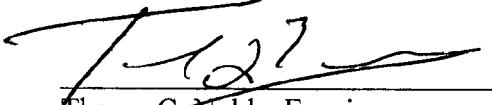
NOTICE OF SERVICE

To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this 4th day of February, 2004, that I did serve a true and correct copy of RULE TO SHOW CAUSE issued upon Plaintiff's MOTION TO COMPEL to the below indicated person, being counsel of record for the Defendant, via United States Mail, postage prepaid, first class:

John R. Ryan, Esquire
Belin & Kubista
P.O. Box 1
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

FILED

FEB 09 2004

William A. Shaw
Prothonotary Clerk of Courts

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

MORTON BUILDINGS, INC.,
an Illinois Corporation;

PLAINTIFF,

: No. 03- 135 -CD

v.

DAVID J. KARCEWSKI,
an adult individual,

DEFENDANT.

Type of Pleading:

MOTION TO COMPEL

Filed By:

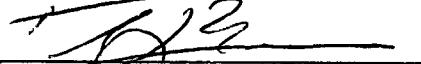
: Defendant/Counter-Plaintiff

To: Defendant

: Counsel of Record:

You are hereby notified to file a written response
to the enclosed MOTION TO COMPEL
within twenty (20)
days from service hereof or judgment
may be entered against you.

: Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814-375-2221
PA I.D.#: 55942



Theron G. Noble, Esquire
Attorney for Plaintiff

JAN 28 2004 *(initials)*
11:20 AM
William A. Shaw
Prothonotary
No. CFM

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

DAVID J. KARCEWSKI,)
an adult individual,)
PLAINTIFF,)
v.) No. 03- 135 -CD
MORTON BUILDINGS, INC.,)
an Illinois Corporation;)
DEFENDANT.)

RULE TO SHOW CAUSE

Now, this 27 day of January, 2004, upon consideration of the attached Plaintiff's MOTION TO COMPEL, a RULE is hereby issued upon the Defendant to SHOW CAUSE why the PETITION should not be granted. RULE RETURNABLE, for filing written response, is set for the 19 day of January, 2004 and argument on the PETITION set for the 19 day of February, 2004, at 1:30, A.M., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

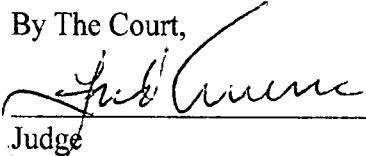
NOTICE

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

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

Court Administrator
Second & Market Streets
Clearfield, PA 16830
(814)-765-2641

By The Court,


Judge

FEB 02 2004

William A. Shaw
Prothonotary

12469 sectatty note

Feb 02 2004

CRD

William A. Shaw
Fiduciary

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

DAVID J. KARCEWSKI,)
an adult individual,)
PLAINTIFF,)
v.) No. 03- 135 -CD
MORTON BUILDINGS, INC.,)
an Illinois Corporation;)
DEFENDANT.)

MOTION TO COMPEL

AND NOW, comes the Plaintiff, David Karczewski, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of Plaintiff's MOTION TO COMPEL:

Background

1. This matter was commenced by the filing of a CIVIL COMPLAINT arising from a breach of contract claim concerning the construction of a commercial building for Plaintiff by Defendant to be used as a state inspection facility and transmission repair shop.
2. The thrust of this case is that the cement floor is improperly sloped and water and other liquids runs away from the drain and ponds in the center of the floor. The parties each have suggested ways to correct this problem, neither of which has appeased the other party.
3. Following the close of pleadings, the parties have been engaged in the discovery process.
4. That Plaintiff propounded discovery requests, consisting of Interrogatories and Requests for Production of Documents.
5. That Defendant essentially responded in a timely fashion, but has raised objections as to some requests and the subject of this present motion. A true and correct copy of the relevant questions and objections are attached hereto as Exhibit "A".

General Issue

5. There is no dispute that the floor is sloped in such a way that liquids do not run to the drain but back away from the drain.
6. Given this fact, it raises an issue which is a general theme through these objections as to what can be discovered and discussed as evidence while what is inadmissible as being in pursuit of settlement.
7. Plaintiff's expert has proffered that the floor needs to be dug and re-poured while Defendant's expert states that a drain should be installed in the area of the low spot, being the center of the floor.
8. There is little doubt that Defendant will contend Plaintiff's solution is not commercially reasonable.
9. Plaintiff believes that given the nature of this case that you can not have a blanket exclusion as to these remedies or solutions as otherwise we are going to be trying a case on a basis less than what is permitted in discovery.

Specific Objections

Issue I: Interrogatories 8 and 9

10. Defendant objects to information requested in Interrogatories 8 and 9 primarily on the basis that the same is inadmissible at trial as protected as offers of settlement.
- 11 Plaintiff readily admits that some possible resolutions between the parties were discussed at the onset of this lawsuit. However, this is neither a blanket exclusion for all like information nor specific to the information in said questions.
12. The questions seek information as to when defendant admits that it was aware of the problem with the slope of the floor. This is relevant not only to the issue of liability but also as to whether it would have commercially reasonable for the defendant to correct the problem prior to the completion of the project.
13. If in fact Defendant was aware of the problem, it should also state why it failed to remedy the problem, which is the information sought by Interrogatory 9.

Issue II: Interrogatory 11

14. The information sought in Interrogatory 11, to which Defendant objects, is the identification of potential witnesses.
15. Defendant objects to this Interrogatory on the basis that it is not likely to lead to relevant or material evidence in that it involves other areas of the building not in issue.
16. Plaintiff contends these other individuals, whom Defendant hired either as employees or employees of other subcontractors, could be and probably are witnesses as to the issues of the slope of the floor as well as to when Defendant was aware that the slope was improper.

Issue III: Interrogatory 15 and 16

17. Interrogatories 15 and 16 are broad questions seeking a detail of all communications, prior to (15) and after construction (16) between the parties concerning the construction of the Plaintiff's building.
18. Defendant objects as being overly broad and not seeking relevant information of the case.
19. Said interrogatory also seeks other information about these communications such as (i) what was said; (ii) by whom; (iii) when; and (iv) who was present during such conversations.
20. Said Interrogatories are entirely appropriate as it deals with possible admissions between the parties (16) while seeking information as to other potential witnesses and permitting the parties the opportunity to weigh the significance of the allegations.
21. Furthermore, Interrogatory 15 seeks information which will be helpful in understanding the parties expected duties and obligations to each other concerning the construction.
22. Lastly, Defendant in response to other Interrogatories (See for instance response to #23) recites such communications. However, in that it has objected hereto, it does not state the surrounding particulars as herein requested. This limits the usefulness of Defendant's responses for no legitimate reason other than Defendant does not wish Plaintiff able to investigate and weigh the alleged circumstances of these communications.

Issue IV: Interrogatory 22

23. Interrogatory 22 seeks information as to why Plaintiff's expert suggestion is not reasonable.
24. Defendant cites his expert report which does not address Plaintiff's solution but instead

details how he would remediate the problem.

25. If Defendant intends to refute, or attempt to refute Plaintiff's expert position at trial, it would be entirely appropriate for them to state the reasons through discovery.

26. Defendant refuses to make such disclosures as it relates to 'remedial measures discussed as possible settlement'.

27. Plaintiff also requests that Defendant identify all witnesses which Defendant intends to call in support of its position herein.

Issue V: Interrogatory 24

28. Interrogatory 24 seeks information, besides that which Defendant objects, as to whether the solution proffered by Defendant would only lessen or entirely correct the defect as well as any ensuing problems it can envision with its suggested solution.

29. Again, Defendant objects with the blanket objection that it relates to settlement discussions.

30. This Interrogatory seeks admissions of Defendant that its solutions sought to be admitted at trial are less than perfect, which is wholly relevant and material.

Issue VI: Interrogatory 26

31. Plaintiff seeks information as to whom Defendant will rely upon in attacking Plaintiff's solution.

32. Again, Plaintiff believes this information is entirely discoverable in order for Plaintiff to fully weight its position prior to trial as well as prepare for trial.

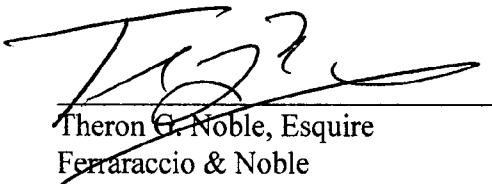
Issue VII: Request for Production No. 11

33. Plaintiff seeks supporting documentation in its Request for Production No. 11 as to the various Interrogatories objected to by Defendant.

34. To the extent Plaintiff is correct in its position as to the previous Interrogatories, it would follow that Defendant should also produce any supporting documentation as to its responses.

WHEREFORE, PLAINTIFF requests that Defendant be ordered to provide the herein requested information within fifteen (15) days hereof.

Respectfully Submitted,

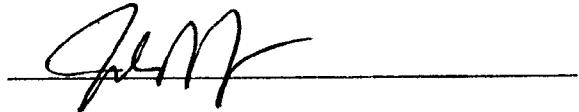


Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiff
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

8. For any defect(s) which was/were known to exist but for which no remedial action was taken by Defendant, state the reason(s) why no such remedial actions were taken or performed.

Answer

Defendant objects to the question No. 8 as seeking discovery of information that is not relevant to this action or reasonably calculated to lead to the discovery of admissible evidence. The information requested represents evidence of settlement offers and/or negotiations which are inadmissible as evidence in this action. Subject to and without waiving those objections, Defendant did offer several proposals to remedy the low spot and to satisfy Plaintiff's concerns, none of which were acceptable to Plaintiff. The specifics of those proposals were supplied to counsel for Plaintiff previously.



9. For any known defects which were not remedied, state in detail what action(s) was/were believed necessary by the Defendant to remediate the defect(s).

Answer

See response to No. 8.

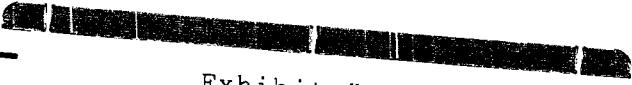


Exhibit "A"

10. For any defects Defendant admits existed after the commercial structure was completed and for which no remedial action was taken, state whether Defendant believes that Plaintiff is in any manner liable or responsible for either the cause of the defect or the remediation of such defects. In the event your response is in the affirmative, please identify such defect(s) and the reason(s) why Defendant believes Plaintiff is so responsible.

Answer

Defendant denies any liability whatsoever for any alleged defect. Further the proposals made by Defendant were attempts to avoid or resolve litigation and as such were not admissions of liability and in any event, are not admissible as evidence, as set forth in answer to No. 8 herein above.

11. Identify all persons or entities who worked on Defendant's behalf, either as an employee or an independent contractor, in attempt to fulfill its contractual obligations to Plaintiff concerning the subject matter of this litigation. Your response hereto shall identify any such person or entity's relationship to Defendant as well as a statement as to the specific function performed by any such person or entity.

Answer

The entity which installed the floor was Bowman Masonry, the subcontractor employed by Defendant. Information regarding the identity and number of employees of Bowman Masonry involved in the installation of the floor of the building in question is not known to Defendant.

Defendant objects to the balance of No. 11 in that the other aspects of the building are not at issue in this action and are therefore not subject to discovery.



15. Detail all communications between Plaintiff and Defendant during the construction phase of the commercial structure, subject matter of this litigation, between Plaintiff and Defendant. Your response hereto shall specify as exactly as possible (i) what was said; (ii) by whom; (iii) when; and (iv) who was present during such conversation(s).

Answer

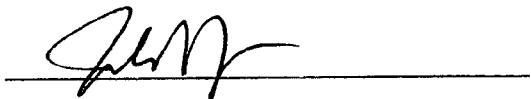
Objection. Defendant objects to the interrogatory as being overbroad and seeking information not relevant to the case at hand, as well as not being calculated to lead to the discovery of admissible evidence.

A handwritten signature in black ink, appearing to read "J. M.", is written over a thin horizontal line.

16. Detail all communications between Plaintiff and Defendant after completion of the construction phase of the commercial structure, subject matter of this litigation, between Plaintiff and Defendant. Your response hereto shall specify as exactly as possible (i) what was said; (ii) by whom; (iii) when; and (iv) who was present during such conversation(s).

Answer

Objection. Defendant objects to the interrogatory as being overbroad and seeking information not relevant to the case at hand, as well as not being calculated to lead to the discovery of admissible evidence.

A handwritten signature in black ink, appearing to read "John M.", is written over a thin horizontal line.

22. Concerning the remedial measure proffered by Plaintiff's expert engineer as being necessary to remediate the defect in the slope of the floor, as alleged by Plaintiff, state all reasons why Defendant believes such remedial effort is not necessary, not economical or is imprudent for any reason what so ever. Your response hereto shall be detailed and shall also provide a detailed answer as to what, if any, remedial efforts Defendant believes necessary to correct the slope in the floor. Your response hereto shall also identify all witnesses who will testify on Defendant's behalf in support of Defendant's position herein stated.

Answer

See attached report from John C. Haas Associates, Inc., which in part addresses the remedial measures suggested by Plaintiff. The portion of said report containing suggested remedial measures by Haas is subject to the same objection as set forth in the answer to No. 8 herein above.

23. Specify exactly when Defendant became aware that either (i) Plaintiff had any concerns or (ii) there was a problem concerning the slope of the floor in the work or bay area of the garage area. Your answer hereto shall include a statement as to (i) what was said; (ii) to whom; (iii) who else was present during said conversation(s); (iv) the date, time and circumstances of such conversation(s); and (v) whether Defendant was aware of the problem prior to Plaintiff's complaint.

Answer

In mid to late May of 2002, Plaintiff advised Fred Lehman that he had a concern regarding the failure of water and other liquids to drain to the trench drain situated at the front doorway of the building. Prior to that time, Defendant was not aware of any "concern" on the part of Plaintiff. Defendant had previously advised Plaintiff that due to Plaintiff's insistence that the drain be located at the front of the building, as opposed to at the center of the floor, that water and other liquids would have to be pushed manually to the drain.

24. In the event you responses hereto acknowledges that a defect does exist in the slope of the floor in the garage or bay area, state in detail the remedial measures offered or suggested by Defendant to correct or lessen the effects of such defect. Your response hereto shall include when the same were offered or suggested; a statement as to whether Defendant believes the same would entirely correct the defect or merely lessen the impact of the defect; and any problems or concerns Defendant envisioned with its offer or suggestion.

Answer

Defendant objects to the question No. 24 as seeking discovery of information that is not relevant to this action or reasonably calculated to lead to the discovery of admissible evidence. The information requested represents evidence of settlement offers and/or negotiations which are inadmissible as evidence in this action. Subject to and without waiving those objections, Defendant did offer several proposals to remedy the low spot and to satisfy Plaintiff's concerns, none of which were acceptable to Plaintiff. The specifics of those proposals were supplied to counsel for Plaintiff previously.

A handwritten signature in black ink, appearing to read "Fred Lehman", is written over a horizontal line. The signature is fluid and cursive, with a distinct "F" at the beginning and a "L" at the end.

26. Identify any expert witness intended to be called by Defendant who will testify that (i) Defendant's offer or suggestion to remediate the slope of the floor was appropriate; and/or (ii) Plaintiff's expert's opinion as to the necessary remedial action is not correct or economical. In the event such an expert is so identified, you should also provide a detailed statement as to that expert's opinion regarding the subject matter of this litigation.

Answer

Defendant objects to the question No. 26 as seeking discovery of information that is not relevant to this action or reasonably calculated to lead to the discovery of admissible evidence. The information requested represents evidence of settlement offers and/or negotiations which are inadmissible as evidence in this action. Subject to and without waiving those objections, see the report from Walter G. M. Schneider, III. Mr. Schneider and/or John G. Manos of John C. Haas Associates, Inc. are expected to be called as expert witnesses. A supplemental report from Mr. Schneider is forthcoming and will be supplied in accordance with Defendant's duty to supplement these Answers.

A handwritten signature in black ink, appearing to read "John G. Manos", is written over a horizontal line.

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

DAVID J. KARCEWSKI,)
an adult individual,)
PLAINTIFF,)
v.) No. 03- 135 -CD
MORTON BUILDINGS, INC.,)
an Illinois Corporation;)
DEFENDANT.)

NOTICE OF SERVICE

To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this
26th day of January, 2004, that I did serve a true and correct copy of
Plaintiff's MOTION TO COMPEL to the below indicated person, being counsel of record
for the Defendant, via United States Mail, postage prepaid, first class:

John R. Ryan, Esquire
Belin & Kubista
P.O. Box 1
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

DAVID J. KARCEWSKI,)
an adult individual,)
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v.) No. 03- 135 -CD
MORTON BUILDINGS, INC.,)
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DEFENDANT.)

NOTICE OF SERVICE

To: William A. Shaw, Prothonotary

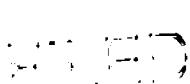
I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this
22nd day of November, 2003, that I did serve a true and correct
copy of Plaintiff's FIRST SET OF DISCOVERY MATERIALS to the below indicated
person, being counsel of record for the Defendant, via United States Mail, postage
prepaid, first class:

John R. Ryan, Esquire
Belin & Kubista
P.O. Box 1
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942



NOV 24 2003

William A. Shaw
Prothonotary Clerk of Courts

771200071 NO
NOV 24 2003 E
REB

William A. Straw
Prothonotary Clerk of Courts

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

DAVID J. KARCEWSKI, :
an adult individual, :
Plaintiff :
vs. : *135* No. 03-155-C.D.
: :
MORTON BUILDINGS, INC., :
an Illinois corporation, :
Defendant :
:

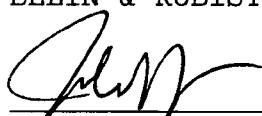
CERTIFICATE OF SERVICE

I, JOHN R. RYAN, Attorney For Defendant, Morton
Buildings, Inc., do hereby certify that a true and correct copy
of the foregoing Notice of Deposition was served by first class,
postage prepaid mail upon the following:

David J. Karczewski
THERON G. NOBLE, Esquire
FERRARACCIO & NOBLE
301 EAST PINE STREET
CLEARFIELD, PA 16830

Said Notice of Deposition was mailed this 23rd day of
April, 2003.

BELIN & KUBISTA


John R. Ryan
Attorney for Defendant

APR 23 2003

William A. Shaw
Prothonotary

0125064 NRC
APR 23 2003
SFC

William A. Shaw
Prathomontary

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

DAVID J. KARCEWSKI,)
an adult individual,)
PLAINTIFF,)
v.) No. 03- 135 -CD
MORTON BUILDINGS, INC.,)
an Illinois Corporation;)
DEFENDANT.)

VERIFICATION

I, David J. Karczewski, Plaintiff/Counter-Defendant, does hereby swear and affirm that I have read the foregoing and attached REPLY TO NEW MATTER and ANSWER TO COUNTER-CLAIM in the above captioned matter, and that to the best of my information, knowledge and belief, the facts as set forth therein are true and correct. Furthermore, that I make this statement subject to the penalties of 18 Pa.C.S.A. 4101, relating to unsworn falsification to authorities.

So made this 14 day of March, 2003.

David J. Karczewski
David J. Karczewski, Plaintiff/Counter-Defendant

FILED

MAR 19 2003
11:40 AM
William A. Shaw
Prothonotary
w/c/c
KES

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

DAVID J. KARCEWSKI,)
an adult individual,)
PLAINTIFF,)
v.) No. 03- 135 -CD
MORTON BUILDINGS, INC.,)
an Illinois Corporation;)
DEFENDANT.)

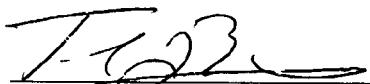
NOTICE OF SERVICE

To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this
18th day of March, 2003, that I did serve a true and correct copy
of Plaintiff's VERIFICATION as to his REPLY TO NEW MATTER and ANSWER TO
COUNTER-CLAIM to the below indicated person, being counsel of record for the
Defendant, via United States Mail, postage prepaid, first class:

John R. Ryan, Esquire
Belin & Kubista
P.O. Box 1
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

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

DAVID J. KARCEWSKI,
an adult individual,

PLAINTIFF, : No. 03- 135 -CD
v.

MORTON BUILDINGS, INC.,
an Illinois Corporation;

DEFENDANT.

Type of Pleading:

**REPLY TO NEW MATTER
ANSWER COUNTER-CLAIM**

Filed By:

Plaintiff

Counsel of Record:
THERON G. NOBLE, ESQUIRE
FERRARACCIO & NOBLE
301 EAST PINE STREET
CLEARFIELD, PA 16830
(814)375-2221
PA I.D. No.: 55942

FILED

MAR 14 2003

William A. Shaw
Prothonotary

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

DAVID J. KARCEWSKI,)
an adult individual,)
PLAINTIFF,)
v.) No. 03-135-CD
MORTON BUILDINGS, INC.,)
an Illinois Corporation;)
DEFENDANT.)

REPLY TO NEW MATTER AND ANSWER TO COUNTER-CLAIM

AND NOW, comes the Plaintiff/Counter-Defendant, David J. Karcewski, by and through his counsel of record, Theron G. Noble, Esquire, who avers as follows as his REPLY TO NEW MATTER and ANSWER TO COUNTER-CLAIM:

Reply to New Matter

23. Plaintiff hereby incorporates his averments 1 - 22, inclusive, as if the same were again fully set forth at length.
24. Denied. The same is a legal conclusion for which no response is deemed necessary. However, to the extent such a response might be deemed necessary then Defendant agreed to perform its work in a diligent and workmanlike manner and said work, properly performed, would have been completed by May 30, 2002. Strict proof of the same is demanded at time of trial.
25. Denied. Plaintiff did not take "occupancy" of the building until later than May 22, 2002. However, and more to the point, when Plaintiff did take such "occupancy", Defendant had not timely nor properly performed its contracted obligations, which required the previously complained of remedial measures. As such, Defendant's contracted work was and still is not completed as of this date. Furthermore, at the time such inspections were performed, although the project was not completed, said inspectors were satisfied that remedial measures would be effectuated which would result in a compliant structure. However, such measures have not been

performed in accordance with Defendant's obligations under the contract and the structure as it exists is not compliant. Strict proof of the same is demanded at time of trial.

26. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response might be deemed necessary, Plaintiff relies on his previous averments.

27. It is admitted that Plaintiff was and is able to temporarily operate, and is economically forced to conduct business, while this matter is being resolved. However, Plaintiff was delayed in the opening of his business given the numerous remedial measures needed to be performed by the Defendant and will eventually need to close his business for sometime, and suffer losses as previously stated, to correct the improperly installed floor and drainage system. Strict proof of the same is demanded at time of trial.

28. It is agreed that as the structure now exists, Plaintiff received the lighting system that he contracted to receive. However, by way of further explanation, he did not receive anything "additional", he just insisted on receiving his contracted for structure. The additional "lighting fixtures", which are three "additional" not five, spoken of by Defendant are not "additional" just merely what was originally contracted to be provided. Strict proof of the same is demanded at time of trial.

29. Admitted. However, by way of further response, the problem created by Defendant's failure to install a properly sloped floor and one contracted to be installed, is not the manner of where oil and grime originate and are moved towards the drain, but that said oil and grime do not flow to the drain, as was contracted for and as is logical, but collect in the work area. Strict proof of the same is demanded at time of trial.

30. Admitted in part, Denied in part. Plaintiff did know of the "low spot" and did tell Defendant on numerous occasions about it. However, Defendant took remedial measures which they assured Plaintiff would correct the problem. Said measures failed to correct the problem and Defendant refused to perform such other remedial measures which would have eliminated the problem and has attempted to force Plaintiff to accept a less than bargained for structure. Strict proof of the same is demanded at time of trial.

31. Admitted in part, Denied in part. It is admitted that Defendant offered some remedial measures, none of which are reasonable or which would correct the defect, so they were rejected by the Plaintiff. Strict proof of the same is demanded at time of trial.

32. For the reasons herein and previously set forth, the same is DENIED and strict proof demanded at time of trial.

33. Admitted in part, Denied in part. It is ADMITTED that Plaintiff is unwilling to pay full

contract price for a structure which does not meet the contract terms and which is unsafe, dangerous, and not as economically feasible as the one contracted to be built. However, it is strictly DENIED that the issues herein raised are raised for any other purpose than to remedy what is an otherwise not satisfactory structure. Strict proof is demanded at time of trial.

34. The same is a legal conclusion for which no response is deemed necessary. However, to the extent such a response might be deemed necessary, the same is DENIED in that the totality of the circumstances, including Plaintiff's overall economic constraints, dictated that he commence operations while this issue was being resolved. Defendant was at all times aware that Plaintiff had a legitimate issue concerning the floor but failed, for reasons of Defendant's own finances, to correct the problem and provide to Plaintiff what Plaintiff had contracted to receive. Strict proof of the same is demanded at time of trial.

35. Averments 1 - 34, and responses thereto, are hereby incorporated as if again fully set forth at length.

36. Denied. For the reasons previously stated the same is strictly DENIED. Proof of the same is demanded at time of trial.

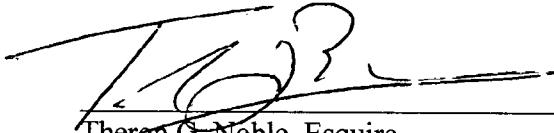
37. Denied. For the reasons previously stated the same is strictly DENIED. Proof of the same is demanded at time of trial.

38. Denied. For the reasons previously stated the same is strictly DENIED. Furthermore, even if Defendant is entitled to any said money, it is DENIED under these circumstances that it is entitled to any such interest. Proof of the same is demanded at time of trial.

39. Denied. For the reasons previously stated the same is strictly DENIED. Furthermore, even if Defendant is entitled to any said money, it is DENIED under these circumstances that it is entitled to any such attorney's fees. Proof of the same is demanded at time of trial.

WHEREFORE, Plaintiff/Counter-Defendant demands JUDGMENT in his favor as per his CIVIL COMPLAINT, together with costs, interest and reasonable attorney's fees.

Respectfully Submitted,



Theron G. Noble, Esquire
Ferraraccio & Noble
Attorney for Plaintiff/Counter-Defendant
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.No.: 55942

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

DAVID J. KARCEWSKI,)
an adult individual,)
PLAINTIFF,)
v.) No. 03- 135 -CD
MORTON BUILDINGS, INC.,)
an Illinois Corporation;)
DEFENDANT.)

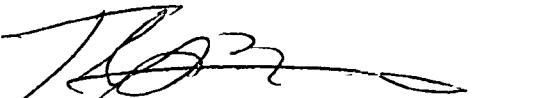
NOTICE OF SERVICE

To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this
12th day of March, 2003, that I did serve a true and correct copy
of Plaintiff's REPLY TO NEW MATTER and ANSWER TO COUNTER-CLAIM to
the below indicated person, being counsel of record for the Defendant, via United States
Mail, postage prepaid, first class:

John R. Ryan, Esquire
Belin & Kubista
P.O. Box 1
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No.: 55942

10
11-16-03
MAR 14 2003
cc
SAC
FBI

William A. Show
Brotherhood

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

DAVID J. KARCEWSKI, :
an adult individual, :
Plaintiff :
vs. :
NO. 03-155-C.D. *135*
MORTON BUILDINGS, INC., : ANSWER, NEW MATTER
an Illinois corporation, : AND COUNTERCLAIM
Defendant :
:

Filed on Behalf of: Plaintiff

Counsel of Record for
This Party:

John R. Ryan, Esquire
PA I.D. #38739

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

FEB 24 2003

*William A. Shay
Prothonotary*

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

DAVID J. KARCEWSKI, :
an adult individual, :
Plaintiff :
vs. : NO. 03-155-C.D. ¹³⁵
: :
MORTON BUILDINGS, INC., :
an Illinois corporation, :
Defendant :
:

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Counterclaim 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 Counterclaim or for any other claim or relief requested by the Defendants. 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
Market & Second Street
Clearfield, PA 16830
(814) 765-2641, ext. 1300

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

DAVID J. KARCEWSKI, an adult individual,	:	
	:	
Plaintiff	:	
	:	
vs.	:	135
	:	NO. 03-155-C.D.
	:	
MORTON BUILDINGS, INC., an Illinois corporation,	:	
	:	
Defendant	:	
	:	

ANSWER

NOW COMES, Morton Buildings, Inc., Defendant above named, and by its Attorneys,

Belin & Kubista, makes its Answer to the Complaint of Plaintiff as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted in part and denied in part. It is admitted that actual construction of the building commenced on March 22, 2002. It is denied that the construction of the building was not completed in a timely fashion in that the contract which is the subject of this action did not contain a completion date. Accordingly, Defendant denies that it contracted or otherwise agreed that construction would be completed by May 30, 2002.
5. Paragraphs 1 through and including Paragraph 4 of Defendant's Answer are incorporated herein by reference as if set forth at length.
6. Denied. Defendant did in fact complete all work in a workmanlike manner, and as alleged above, the contract did not contain a completion date. As to Subparagraphs (a) through (e), Defendant responds as follows:

- a. It is admitted that the toilet installed by Defendant's plumbing subcontractor had a small leak upon installation. Repairs were made and completed, at no cost to Plaintiff, on June 14, 2002.
 - b. Denied as alleged. The interior doors were incorrectly installed with the wrong height threshold. The problem was corrected at no cost to Plaintiff and the proper doors and thresholds were installed on May 28, 2002. The subcontractor returned to the job site to install trim on the garage side door on June 29, 2002.
 - c. Denied as alleged. Defendant admits that the lighting subcontractor did order the wrong light fixtures, which were immediately reordered and replace with the correct fixtures. Any inference that Defendant attempted to force Plaintiff to accept fixtures not contracted for is denied and strict proof thereof is demanded at time of trial.
 - d. Denied as alleged. Defendant's overhead door subcontractor did utilize three different remote control transmitters before the range requested by the Plaintiff was obtained. However, at all times after installation of the overhead doors, they were operable by push button controls.
 - e. Admitted. Defendant believes and therefore avers that the supplier of the portable toilet failed to remove the unit from the site when requested by Defendant to do so.
7. Denied as alleged. Defendant admits that it was aware of Plaintiff's intended use for the building which was the subject of the plans supplied by Plaintiff, however, the contract itself is silent as to any intended use.

8. Admitted.
9. Denied as alleged. Defendant was asked by Plaintiff to provide an oil interceptor system which would accommodate the layout designed by Plaintiff, and did so.
10. Admitted, however the entire layout of the system and the trench was done in accordance with the instructions of Plaintiff.
11. Admitted.
12. Admitted.
13. Denied. On the contrary, the floor was sloped as needed to accommodate Plaintiff's layout. There remained one "low spot" on the floor which was shown to Plaintiff prior to his painting of the floor and installation of lifts.
14. Denied. It is believed and therefore averred that the building, including the floor, was inspected by the Pennsylvania Department of Transportation prior to Plaintiff opening for business as a repair shop and inspection station. Strict proof of the Plaintiff's allegation that the "low spot" on the floor created an unsafe and hazardous environment is demanded at the time of trial.
15. Denied for the reasons set forth in Paragraphs 13 and 14 herein above. Strict proof is demanded at the time of trial.
16. Denied. On the contrary, Plaintiff was advised prior to construction of the floor that the layout designed by him would require water and other liquids to be broomed or brushed to the trench. Further, as designed by Plaintiff, the layout required that water and other liquids would by necessity have to run across the work area to reach the drainage trench and the oil separator system. Strict proof of all the allegations of Paragraph 16 is demanded at time of trial.

17. Denied for the reasons set forth herein above.
18. Admitted.
19. Admitted that the grates initially installed were insufficient and were replaced with suitable grates at no cost to Plaintiff.
20. Admitted as stated in Paragraph 19. Defendant is without knowledge as to whether the replacement grates are unsuitable; as it has received no information or complaint about said grates from Plaintiff until the filing of this Complaint.
21. Admitted.
22. Admitted.

WHEREFORE, Defendant demands that Plaintiff's Complaint be dismissed and that judgment be entered in its favor and against the Plaintiff.

NEW MATTER

NOW COMES, Morton Buildings, Defendant above named, and by its Attorneys, Belin & Kubista, files its New Matter and avers as follows:

23. Paragraphs 1 through and including Paragraph 22 of Defendant's Answer are incorporated herein by reference as if set forth at length.
24. As set forth herein above, the contract between Plaintiff and Defendant contains no provision for a completion date. Therefore, Plaintiff has no cause of action for an alleged breach of contract on the basis that the project was not completed in a timely fashion, and any allegations to that end are irrelevant.
25. In fact, Plaintiff commenced construction of the building on March 28, 2002 and Plaintiff took occupancy on May 22, 2002. It is believed and therefore averred that the building was inspected by the Pennsylvania Department of Labor and

Industry on May 30, 2002 and was also inspected by the Pennsylvania Department of Transportation prior to Plaintiff opening for business as a state inspection station.

26. All of the alleged "breaches" of contract set forth by Plaintiff in Paragraph 6 (a-e) were remedied by Defendant in a prompt fashion and at no cost whatsoever to Plaintiff. As such, none of the said alleged "breaches" gives rise to a cause of action for breach of contract. Further, Plaintiff does not allege that he incurred any damage whatsoever as the result of the alleged "breaches" set forth at Paragraph 6 (a-e).
27. None of the alleged "breaches" set forth at Paragraph 6 (a-e) prevented Plaintiff from opening and operating his business in the building constructed by Defendant.
28. With respect to the lighting fixture, Defendant actually installed five (5) additional fixtures and two (2) additional receptacles at Plaintiff's request and at no additional cost to Plaintiff.
29. With respect to the floor, Plaintiff provided Defendant with a floor layout, which included the location of the drainage trench and oil separator. As a result of the manner in which Plaintiff wanted the floor to be constructed, and the location of the drainage trench and oil separator, Plaintiff at all times knew that water and other liquids would have to drain across the work area to the trench, and further knew that he would have to push water and other liquids to the trench by broom or other method.

30. Further, Plaintiff knew of the existence of the “low spot” prior to taking possession of the building. With this knowledge, Plaintiff proceeded to paint the floor, install the lifts in the repair bays, and open for business.
31. Defendant and its subcontractor who installed the floor have repeatedly offered Plaintiff various alternatives to remedy the “low spot”, all of which remedies have been rejected by Plaintiff.
32. It is believed and therefore averred that the existence of the “low spot” does not render the entire floor in any way unsafe or dangerous, and it certainly has not prevented Plaintiff from operating his business. Again, Plaintiff knew he would have to push materials across the floor in any event due to the nature of his layout and floor plan.
33. It is further believed and therefore averred that Plaintiff is unwilling to pay Defendant certain monies due and owing to Defendant under the terms of the contract, and is attempting to rely upon the condition of the floor as an excuse to withhold payment.
34. Under the express terms of the contract, Plaintiff was entitled to occupy the building upon acknowledging satisfactory completion of the building, which Plaintiff did in this case. Plaintiff is therefore estopped from now claiming that Defendant failed to perform under the terms of the contract.

WHEREFORE, Defendant demands that judgment be entered in its favor and against the Plaintiff.

COUNTERCLAIM

NOW COMES, Morton Buildings, Inc, and by its attorneys, Belin & Kubista, files its Counterclaim against the Plaintiff as follows:

35. Paragraphs 1 through and including Paragraph 33 of Defendant's Answer and New Matter are incorporated herein by reference as if set forth at length.
36. Defendant has completed its performance under the terms of the contract and has furnished certain labor and materials for the construction of the building which is the subject of this action.
37. There is due and owing to the Defendant the sum of Thirty Eight Thousand Dollars (\$38,000.00) under the terms of the said contract, which Plaintiff has failed and refused to pay.
38. Further, under the express terms of the contract, Defendant is entitled to a 1 1/2% service charge (18% annual rate) or the maximum rate allowed in Pennsylvania, whichever is less, on the unpaid and outstanding balance.
39. In addition, under the express terms of the contract, Defendant is entitled to costs and reasonable attorney's fees expended to enforce the terms of the contract.

WHEREFORE, Defendant demands that judgment be entered in its favor and against Plaintiff in the amount of Thirty Eight Thousand Dollars (\$38,000.00), together with interest at

the contracted rate, costs and counsel fees.

Respectfully submitted,

BELIN & KUBISTA



John R. Ryan
Attorney for Defendant

VERIFICATION

I verify that the statements made in this Answer, New Matter and Counterclaim are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities.

MORTON BUILDINGS, INC.

Bill Shanahan M/S
By: Bill Shanahan, Manager

CLEARFIELD, PENNSYLVANIA 16830
P. O. BOX 1
15 NORTH FRONT STREET
ATTORNEYS AT LAW
BELIN & KUBISTA

FILED

2cc
1/3/03
FEB 24 2003
William A. Shaw
Prothonotary

2003-02-24
WAS

William A. Shaw
Prothonotary

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

DAVID J. KARCEWSKI, :
an adult individual, :
Plaintiff :
: :
vs. : No. 03-135-CD
: :
MORTON BUILDINGS, INC., :
an Illinois Corporation, :
Defendant :
:

ACCEPTANCE OF SERVICE

Filed on behalf of

Defendant

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law
Pa. I.D. 38379

BELIN & KUBISTA
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

W. C. Shaw
Prothonotary

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

DAVID J. KARCEWSKI,)
an adult individual,)
)
PLAINTIFF,)) No. 03- 135 -CD
v.)
)
MORTON BUILDINGS, INC.,)
an Illinois Corporation;)
)
DEFENDANT.)

ACCEPTANCE OF SERVICE

I accept service of process, pursuant to Pa.R.Civ.P. 402(b), of the CIVIL COMPLAINT on behalf of Defendant Morton Buildings, Inc., and certify that I am authorized to do so.

Date: FEB. 6 . 2003

Respectfully Submitted,


John R. Ryan, Esquire
Attorney for the Defendant
Belin & Kubista
P.O. Box 1
Clearfield, PA 16830

CLEARFIELD, PENNSYLVANIA 16830
P. O. BOX 1
15 NORTH FRONT STREET
ATTORNEYS AT LAW
BEILIN & KUBISTA

RECORDED
CLERK'S OFFICE
CLEARFIELD, PENNSYLVANIA

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

DAVID J. KARCEWSKI,
an adult individual,

PLAINTIFF,

: No. 03-135-CD

v.

MORTON BUILDINGS, INC.,
an Illinois Corporation;

DEFENDANT.

Type of Pleading:

CIVIL COMPLAINT

Filed By:

Plaintiff

Counsel of Record:

Theron G. Noble, Esquire

Ferraraccio & Noble

301 East Pine Street

Clearfield, PA 16830

(814)-375-2221

PA I.D.No.: 55942

07/10/03
Shaw
Notary

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

DAVID J. KARCEWSKI,)
an adult individual,)
)
PLAINTIFF,)
)
v.) No. 03-_____ -CD
)
MORTON BUILDINGS, INC.,)
an Illinois Corporation;)
)
DEFENDANT.)

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIM 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 CLAIM IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF(S). 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 AN ATTORNEY, OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

David Meholic, Court Administrator
Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830
(814)-765-2641

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

DAVID J. KARCEWSKI,)
an adult individual,)
PLAINTIFF,)
v.) No. 03-_____ -CD
MORTON BUILDINGS, INC.,)
an Illinois Corporation;)
DEFENDANT.)

CIVIL COMPLAINT

NOW COMES, the Plaintiff, David J. Karczewski, an adult individual, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of his CIVIL COMPLAINT:

The Parties

1. Plaintiff is David J. Karczewski, an adult individual, who does, and at all material times, did reside at 230 North Tenth Street, Philipsburg, Centre County, Pennsylvania.
2. That Defendant is Morton Buildings, Inc., upon information and belief a duly formed and existing Illinois Corporation, having its principal place of business at 252 West Adams Street, Morton, Tazewell County, Illinois 61550-0399.

Background

3. On, or about, December 18, 2001, the parties entered into a contract, prepared by Defendant, concerning the construction of a commercial building situated on land located in Morris Township, Clearfield County, Pennsylvania, with address of 4225 Morrisdale/Allport Highway. A True correct copy of such documentation is attached hereto as Exhibit "A".

4. Said construction work was to commence on or about March 28, 2002 and was to be completed by the Defendant by May 30, 2002.

Count I: Breach of Contract

5. The averments of paragraphs 1 - 4, inclusive, are hereby incorporated as if again fully set forth at length.
6. That Defendant did not complete the contracted work in a timely or workmanlike manner which included as follows:
 - (a) The toilet leaked which required the Defendant to take remedial measures on three separate occasions, the last of which occurred about Mid-July, 2002;
 - (b) Doors attempted to be installed were not those purchased by the Mr. Karczewski and were not handicap accessible, as needed and contracted. As a result, to install the appropriate doors, Defendant performed numerous remedial measures through June, 2002;
 - (c) The Defendant attempted to install four (4) feet long indoor lighting whereas Mr. Karczewski contracted for eight (8) feet long lighting. Four (4) feet long indoor lighting would have resulted in impractical lighting for Mr. Karczewski, was rejected, and not readied until the beginning of June, 2002;
 - (d) The garage doors to the “bay” areas were to be operated by remote control. The remote control was not operable until mid-July; and
 - (e) Defendant did not remove its portable toilet until mid-August, 2002.
7. That the intent of the contract between the subject parties was for the construction of a building to be used as a transmission repair and state inspection facility.
8. That as part of the contract, Defendant was to construct two “bays” or “work” areas in the garage portion of the building where said repair work would be performed.
9. That in accordance with standards set forth by Pennsylvania’s Department of Environmental Resources, as well as those of Morris Township Sewer Authority, Defendant recommended to Mr. Karczewski, and based upon Defendant’s recommendation Mr. Karczewski agreed for the installation of a Zurn Oil Interceptor system.

10. As part of said Zurn Oil Interceptor system, a trench was to be installed in the rear of the building, by the garage doors, which would collect the runoff water, oil and grime from the bay areas and which would then be fed into the Zurn Oil Interceptor system.

11. To facilitate such drainage into the trench, the cement floor installed by the Defendant needed to be sloped such that "it ran" from the front of the building to the rear where the trench and Zurn Oil Interceptor System are located.

12. That in accordance with Pennsylvania Department of Transportation (Penn DOT)standards, the floor could not be sloped more than one percent (1%) from front to rear.

13. In fact, the cement floor is not sloped as designed and agreed upon in that it drains not in the rear of the building but gathers in the middle of the floor, being the center of the work area.

14. That as a result of the improperly installed floor, water, oil and grime collect in the center of the work area. Not only did Mr. Karczewski not contract for this condition, the same actually creates an unsafe and hazardous work environment as well as one which requires an inordinate amount of time to clean the oil and grime created in the normal course of Mr. Karczewski's normal and intended commercial activities.

15. As installed, upon information and belief, the cement floor actually exceeds the one percent (1%) slope permitted by Penn DOT.

16. To remedy this unsafe, dangerous and not contracted for situation, the following remedial measures must be taken:

(a) The two hydraulic lifts must be removed and re-installed at an approximate cost of \$2,300, to be more fully determined at time of trial;

(b) Likewise, the air compressor, cabinets, benches, sink solvent tank and the like need to be removed then re-installed, at an approximate cost of \$2,000, to be more fully determined at time of trial;

(c) The improperly installed cement floor needs to be removed, disposed and a cement floor properly installed to drain as designed and contracted, all at an approximate cost of \$18,000, in an amount to be more fully determined at time of trial;

(d) The office, bathroom, and lobby areas need to be removed and re-installed after the cement floor has been remedied at an approximate cost of \$8,000, in an amount to be more fully determined at time of trial;

(e) It is believed, and therefore averred, that the process to do items (a) - (d) would take 10 weeks to remedy the situation which would result in the loss of revenue of approximately \$30,000 to the counter-plaintiff, in an amount to be more fully determined at time of trial;

(f) That Mr. Karczewski would incur additional miscellaneous expenses such as permit fees, inspections and the like, as well as to again seal in the new cement floor, at an expense of approximately \$2,000, in an amount to be more fully determined at time of trial; and

(g) That for Mr. Karczewski to shut down his newly started business for a period of 10 weeks would result in the loss of "good will" to his business, in an amount to be more fully determined at time of trial.

17. That items (a) - (g) are the direct and proximate result of Defendant's breach of the construction contract and are reasonable and foreseeable damages suffered by Mr. Karczewski as a result of such breach.

18. Likewise, the Counter-Defendant was to provide grates to cover the trench which it built.

19. That the grates which were initially placed over the trench opening, bent and needed to be replaced as soon as a vehicle crossed over them.

20. That Defendant replaced these four (4) original grates however, said replacements are not of sufficient size and need to be again replaced at a cost to be determined at time of trial.

Miscellaneous Averments

21. That jurisdiction is proper.

22. That venue is proper.

PRIMARY CREW FOR MAN: YES NO

CUSTOMER Dave Karczewski **SALESMAN & NO.** Lehman 96-2 **JOB NO.** 96-2665

FOREMAN & NO. BRIAN PHILLIPS #14096095 DATE 03-28-02 04-22-02

DATE 03-28-02

04-22-02

(Started)

(Last Day Crew Worked)

HOURS ALLOWED **HOURS TAKEN** 307.5 **ESTIMATOR** Ken Parker

ESTIMATOR Ken Parker

(Last Day Crew Worked)

HOURS ALLOWED _____ **HOURS TAKEN** 307.5 **ESTIMATOR** Ken Parker

ESTIMATOR Ken Parker

DATE	NAMES OF CREW MEMBERS (D-DIGGER)(S-SCISSORS)					TOTAL	MEAL MONEY
	BRIAN	KARL	BUD	NICK	JIM W		
3/28	9	9		9	D 3	30	
29	9	9		9		27	
4/01	5	7	7	7		26	
02	9	9	9	9	JEFF K	36	
03	6	9	9	9	S 10	43	
04	10	10	10	10		40	
05	9	9	9	9	5.5	41.5	
08	10	10	10	10		40	
09	7	7				14	
22	5		5			10	
					TOTAL	307.5	
					MEAL MONEY RETURNED		
(Manager's Signature)							

Form 12 Serial Numbers:

Type of Repair:

Total Paid

SEQ. NO.	INVOICES USED
1	Invoiced By estimator
2	Invoiced By estimator
3	Crew Error
4	Crew Error
5	Needed to Finish Bldg
6	Replace Damaged Material
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

P.A. NUMBER	PURPOSE	AMOUNT	P.A. NUMBER	PURPOSE	AMOUNT	9
DIGGER TRUCK USED	3 HRS		069552	Readimix	\$232.14	10
SCISSOR TRUCK USED	15.5 HRS		96-14	Set Trusses	\$318.75	11
			96-15	Portapot	\$79.50	12
065964	Courier Fee	\$100.00	96-19	Portapot	\$79.50	13
065965	Dept. of L&I	\$180.00				14
044321	Conc/Footers	\$294.68				15
069551	Sackrete	\$16.92				16
065970	Drafting Paper	\$8.56				17
						18
						19
						20

SUB. NUMBER		SUBCONTRACTORS/ADDITIONAL BILLS			
233137	Bowman Masonry	PAID 05-07-02	7,470.00	7470.00	96-18
218887	Milroy Door, Inc.	PAID 05-07-02	5,008.00	5008.00	96-18
188571	Cambria Glass & Insulation Inc	PAID 06-11-02	1,200.00	1200.00	96-23
233139	Gmerek Construction	PAID 05-28-02	6,080.00	6080.00	96-21
09047	Peno Building Company	PAID 05-07-02	21,700.0	2600.00	96-18
		PAID 05-14-02		9550.00	96-19
		PAID 07-09-02		9550.00	96-27

Site - MORTON HOME OFFICE
Men - MORTON/CREW
Gold - MORTON HOME OFFICE
Canary - CONSTRUCTION CENTER
Pink - OWNER'S COPY

38851

MORTON BUILDINGS, INC.

252 W. Adams, P.O. Box 399 • Morton, Illinois 61550-0399

96-2665 P

JOB NUMBER

Sold To **DAVE KARCEWSKI**

Phone **(814) 347-4347**

Address **230 N 10th St** City **Philipburg** State **PA** Area Code **16866**
Street, Rd, P.O. Box **DAVE KARCEWSKI**

Phone **(814) 347-4347** Zip Code **16866**

Deliver To **Rte. 53** City **Morrisdale** State **PA** Area Code **16866**
Address **STREET, RD, P.O. BOX**

City **Rte. 80 West to Exit 21 Ryertown.** State **PA** Zip Code **16866**

Directions to job site: **Take Rte. 53 South + 4**

Miles on Right.

Date **12-18-01**

Sales Consultant

1. 96-2 F Lehman

2.

SITE PREPARED DATE

APPROX. DELIVERY DATE

BID JOB		Yes / No (CIRCLE ONE)		PREVAILING WAGE		Yes / No (CIRCLE ONE)	
BUILDING USE	REPAIR SHOP	CLASS NO	341	HI RIB STEEL PANEL USE, PAINT TYPE & COLO			
BUILDING SPECIFICATION (all dimensions are nominal)						ROOF	SIDE/END
QTY.	STYLE	WIDTH	HEIGHT	LENGTH	TRUSS SPACING	PAINT	SLIDE/DOOR
1	E372	42'	16'	45'	7'-6"	COLOR	OVERHEAD DOOR
This order is a rewrite of previously cancelled Job 96-2611P, which was written on Form #09206 and Form 12a #63475. Transferred from the previous contract to this new order in the following items.							
Down Payment \$9,500.00							
Form 86							
Form 153							
Form 143							
All Form 40 Subcontracts							
2	12' x 14' Bayonet Tri-Core II Overhead Doors w/Operator (3) Windows						
3	9100 3060 Entrance Doors (2 with Panic Hardware) Closers						
2	4' x 3' 9-1/2" Bayfield Windows						
-	2'-0" Overhang Around Entire Building						
--	Cutters and Downspouts						
Contract Price excluding subsequent change orders							
\$ 9,500.00	Down Payment (CHECK #:)						
\$ 47,500.00	Delivery Payment due upon delivery of materials.						
\$ " "	Progress Payment due upon						
\$ 38,000.00	Final Payment is to be paid to Morton Salesman upon completion of this contract. TERMS: NET 30						
Exhibit "A"							

LEAD SOURCE

NO.

No representation, warranty, condition or agreement of any kind or nature whatsoever shall be binding upon Morton Buildings, Inc. unless incorporated in this Agreement. It is understood by the parties hereto that the terms and conditions of this contract and the financial ability of the purchaser are subject to acceptance at the Morton, Illinois office of Morton Buildings, Inc.; that prior to such acceptance an investigative report may be obtained; and that prior to such acceptance the entire liability of Morton Buildings, Inc. under the contract may be discharged by the return of any monies which the purchaser may have deposited as a condition of this contract. It is agreed by the parties hereto that the Company assumes no liability for failure for any reason to deliver the merchandise on any requested or tentatively set shipping date, and the buyer agrees to accept delivery of the merchandise at any reasonable time, thereafter. Builders' Risk Insurance coverage will be provided by Morton Buildings, Inc. until construction is completed and accepted by the owner. Owner can occupy building upon acknowledging satisfactory completion of the building and making payment in full. If occupancy must take place before completion of the project, final payment and insurance is required. It is agreed that labor other than Morton Buildings, Inc. employees and its subcontractors is not anticipated, and that if other labor or supervision is required the contract will be renegotiated. The event of default by the buyer, Morton Buildings, Inc. shall be entitled to 1 1/2% per month service charge from the date of default (18% annual rate) or the maximum rate allowed in the customer's state or where ever applicable, whichever is less; and the reasonable amount of costs and attorney's fees expended to enforce the terms of this contract.

The items described on this Form 12, and on any accompanying Form 12S's, with Serial numbers **71521**, Form 86, and Form 153, Form 3 constitute our agreement in its entirety. Additions and/or changes to this agreement must be in writing with necessary charges and credits stated. Warning Forms **71521** / **71521** and Warranty No. **280** / **280** apply.

Owner's initial

BANK

The undersigned hereby warrants and represents that he/she is the owner of record of the premises upon which this building is to be erected.

er's Signature x

(Make all checks payable to Morton Buildings, Inc.)

NOTE: YOU THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF
TUESDAY BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION SEE THE ATTACHED NO

White - MORTON HOME OFFICE
Green - MORTON CREW
Gold - MORTON HOME OFFICE
 Canary - CONSTRUCTION CENTER
Pink - OWNER'S COPY

71821

MORTON BUILDINGS, INC.

252 W. Adams, P.O. Box 399 • Morton, Illinois 61550-0399

96-2665 F

JOB NUMBER

Sold To E. J. DAVE KARCEWSKI

Phone (814) 342-4347
AREA CODE

Address 230 N 10th St
STREET, RD., P.O. BOX

Philipsburg
CITY

PA
STATE

16866
ZIP CODE

Date 12-18-01

Sales Consultant

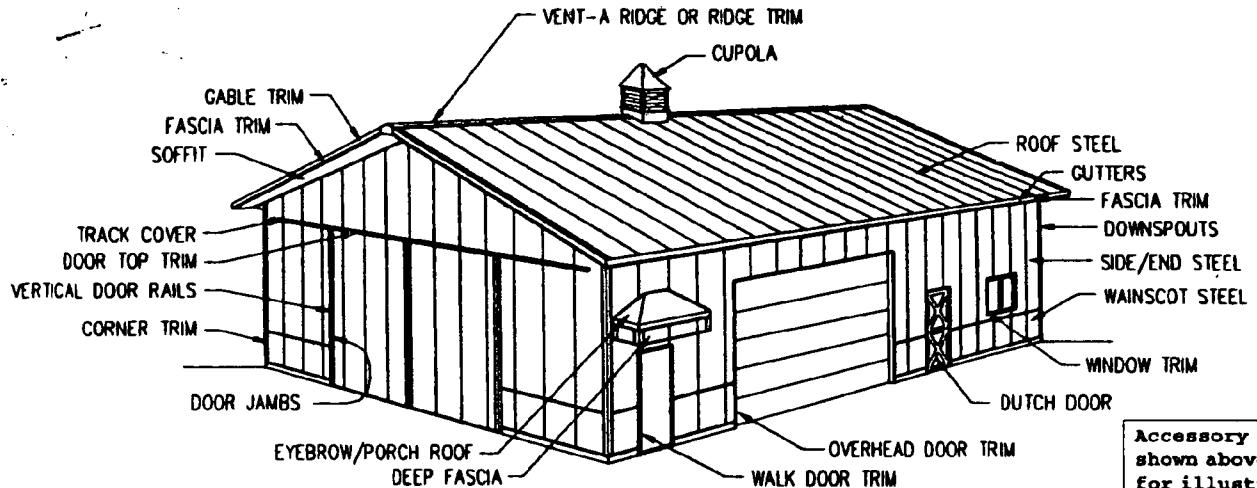
1. 96-2 F Lehman

2. _____

QTY.	BUILDING ACCESSORIES & COMPONENTS CONTINUED
-	Hi-Rib Steel Wainscot w/7/16 Protective Liner Board
-	R-19 Wall Insulation w/Steel Liner (Top ±8' to be Acoustical Steel)
-	R-38 Ceiling Insulation w/Steel Liner
-	6 Inch Concrete Floor w/2" Horizontal Perimeter Insulation 2' Wide, ± 32'
-	Trench Drain Concrete Specs per Form 222
-	Interior Room Layout per Plan and Room Finish Schedule; Storage Deck Above These Rooms for Mechanical Equipment. See Room Finish Schedule for Finishes.
-	Heating to Include: (1) York 80 Plus LP Gas Furnace. Once Centralducted System to Meet Space Heating Requirements for Building. System will Utilize One Zone Control w/1" Ductboard Construction and Sidewall Supply and Return Registers. Thermostat to be Located in Garage Area.
-	Plumbing to Include: Sanitary Waster- Vent and Domestic Water Piping for One Handicap Accessible Toilet Room, One Water Closet and Lavatory, One Fiberglass Service Basin Located Outside of Toilet Room Next to Toilet Room (2) Hose Bibs. Oil Separator for T-Drain. Water Supply to Parts Washer. 40 Gallon Hot Water Heater (Electric). All Sanitary and Domestic Water Piping to 3' Outside Building.
-	Electric to Include: 400 AMP 3 Phase Overhead Service Entrance to (2) "Sq. D" Breaker Panels (200 AMP EA) (50) Electrical Openings, (3) Phone Openings, (1) Compressor Circuit Parts Washer Circuit, (2) Hydraulic Lift Circuits, (2 HP), (1) Water Heater Circuit (1) Furnace Circuit, (2) Overhead Door Operator Circuits, (14) High Output Florescent Fixtures (8' - 2 Lamp) (?) Metal Halide Wall Pack Fixtures and All Inspections.
-	All Utilities, Water, Sanitary Sewer, Electric, Phone to be Brought to Building by Owner.
(1)	30" x 30" Exhaust Fan Above Man Door Between Overhead Doors
-	Concrete Floor at 12' x 30' Area to be 8" Thick for Both Bays
-	If Order is Cancelled Prior to Delivery Confirmation, Money for Plan Services (\$2,000) and PA Labor and Industry Permit (\$400.00) will be Retained from Down Payment

Terms and conditions pertaining to this Agreement are specified on Form 12, Serial No. 38251. This form is invalid unless it is used as a supplement to a Form 12, and is accompanied by a Form 12.

Owner's Signature x



TRIM & ACCESSORY COLOR IDENTIFICATION

Denote color desired by placing an "X" in the appropriate box for each trim and accessory.

	R	E	W	G	N	B	B	S	C	I	V	E	E	B	CORAL
	E	A	H	R	S	R	L	I	H	V	O	R	V	U	TURQ.
	D	N	I	E	E	O	A	L	A	R	R	G	G	R	BLUE
RIDGES															GOLD
VENT-A-RIDGE	+	+		+	+		+	+							X
T#5 RIDGECAP (1)				+	+										+
T#5/T#30 (1)			+	+	+										+
SOFFIT															X
GABLE (1)				+											X
FASCIA (2)				+											+
HI-RIB DEEP FASCIA															+
GUTTER															X
DOWNSPOUTS															X
CORNER TRIM ABOVE WAINSCOT (1)															+
WAINS. (BASE, CORNER, HI-RIB) (3)															X
BASE W/O WAINS. (1)						+									+
OND DOOR (4) TRIMS		+		X		+		+							+
COIL-UP DOOR (1) TRIM															+
T#143 BETWEEN COILUP DRS. (1)															+
SLIDING DOOR															+
TRIM															+
VERT. RAILS (2)	+			+											+
TRACK COVER (1)	+				+										+
JAMB (1 or 2)	+			+											+
DOOR TOP (2)	+				+										+
DIAM. M															
SLIDING DOOR															
GRILL INSERTS															
PANEL INSERTS															+
9100 WALKDOOR															
PNW WALKDOOR															
PNW WALKDOOR TRIM (2)	+	+		+	+		+	+	+	+	+			+	+
WINDOWS				X											
WINDOW TRIM (3)	+	+		X	+	+		+	+	+	+			+	+
SHUTTERS															
DIAM. M															
HEADER															
HI-RIB															
TRIM (2)	+	+		+	+		+	+						+	+
BOX (3)	+	+		+	+		+	+						+	+
PORCH COLUMN COVERS (1)	+	+			+	+		+	+						+
PORCH/EYEBROW SOFFIT															
CUPOLA															
ROOF (1)															+
SIDES (1)															+
DUTCH DOORS															
CROSSBUCKS*															
INSERTS*															
TRIMS (3)	+	+		+	+		+	+						+	+

OPEN BOX = NO EXTRA CHARGE

+ = AVAILABLE WITH APPLICABLE SET-UP CHARGE

X = NOT AVAILABLE

* = SEE PRICE BOOK FOR AVAILABLE COMBINATIONS

() = NO. OF TRIM SHAPES REQUIRING SET-UP CHARGES

White - Morton Home Office, Green - Morton/Crew, Gold - Morton Home Office, Canary - Construction Center, Pink - Owner's Copy
FORM #3, Rev. 5/01 © 1996 Morton Buildings, Inc.Owner's Signature: *[Signature]*

Date: 12-3-01

SITE CONDITIONS AT TIME OF SALE

2665P

Owner's Name Five KARCEWSKI

Job Number 96-2641P

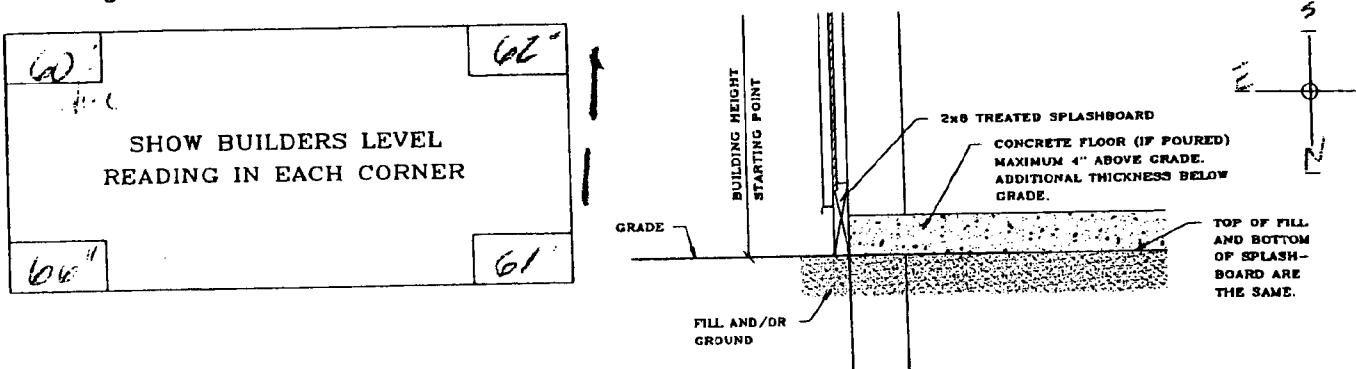
Before Morton Buildings, Inc. employees or subcontractors receive permission from Morton Buildings, Inc., Morton, Illinois to work on this site, the following conditions must be satisfied:

1. Site must be prepared to **Morton Buildings, Inc. BUILDING SITE SPECIFICATIONS, Form 153A, dated 5/98.** Owner must acknowledge receiving a copy and insure that his excavating contractor will follow these specifications by initialing this space X SK (Owner's Initials)
2. Digging clearances must be on hand from authorities who have jurisdiction over this site. The local dig number is 300-2421776
3. Private lines (electric, telephone, cable, water or sewer lines) must be identified and marked by Owner. Damages incurred by severing private lines must be repaired at Owner's expense if lines were not marked.
4. Tire ruts of construction equipment and delivery trucks are, in most cases, unavoidable. Fixing tire ruts will be at Owner's expense.

The site was inspected on 4-5-01 by Eric Lohman, B.B. 11614
(Date) (List all people present: Sales Consultant, Owner, Subcontractor, etc.)

Building locator flags were placed on the lot aligning the building with Exterior Wall

Owner designated **Grade Line** as shown in detail below on a grade stake or bench mark located Next to a Barn



Describe the site and work that needs to be done: Removal of existing trees. Level 5.
Excavate

RESPONSIBILITY DIVISION. Identify required services that will be provided and paid for by the party checked.

SERVICE	OWNER	MORTON	SERVICE	OWNER	MORT
Site engineering (survey, water, soil bearing)	✓		Gas Service hookup	✓	
Environmental impact study	✓		Water & Sewer Service hookup	✓	
Percolation test	✓		Permanent Electrical service		✓
Earth moving	✓		Telephone, cable TV service & hookup		✓
Obstruction removal	✓		Toilets will be provided by		
Buying, placing & compacting fill	✓		Construction trash will be removed in the following manner:		
Covering or disconnecting electrical lines	✓		<u>Removed & Set</u>		
Special digging equipment	✓		at <u>Morton</u> expense.		
Zoning Permit (Plans not required)	✓				
Building Permit (Plans Provided by MBI)	✓				

HOSPITAL PHONE 911

AMBULANCE PHONE 911

FIRE DEPT. PHONE 911

510-242-1776

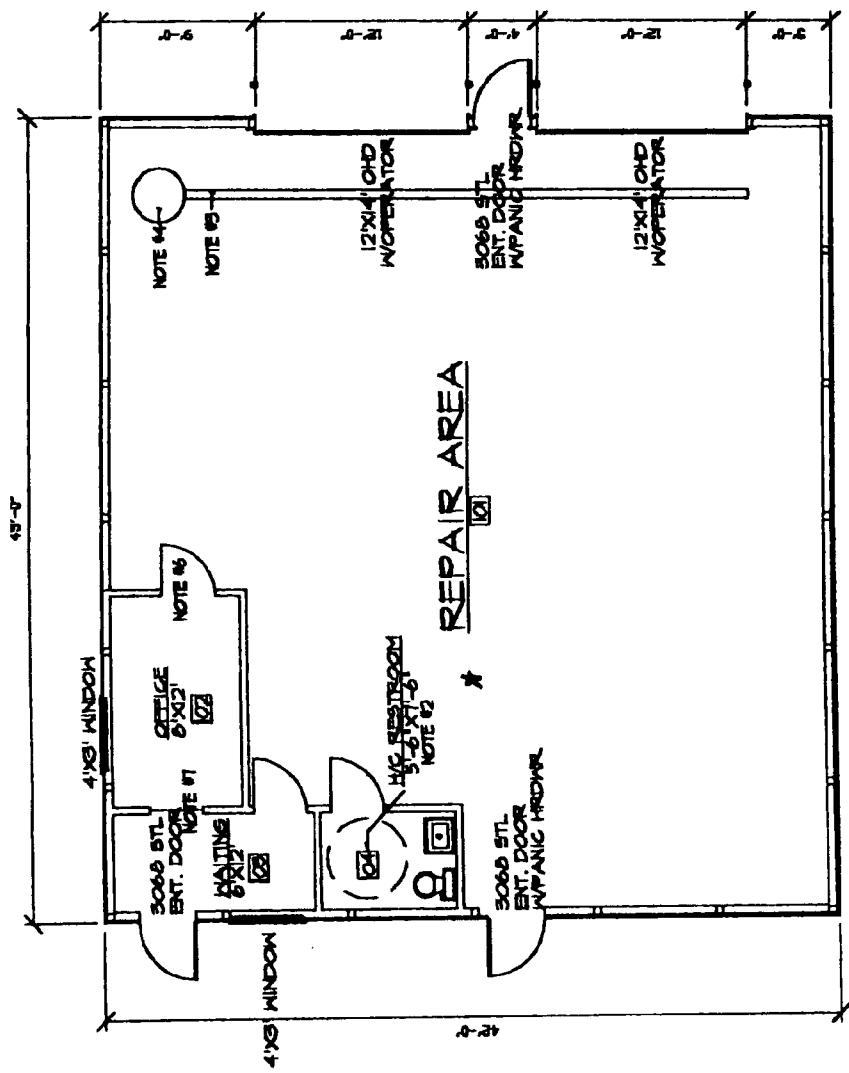
(Owner's Signature)

10-12-01

(Date)

Eric Lohman

(Morton Sales Consultant's Signature)



FLOOR PLAN

DO NOT PULL CORD WHILE CHARGING THE BATTERY. THIS CAN DAMAGE THE BATTERY.

ROOM FINISH SCHEDULE

SPOT	DESCRIPTION	SIZE (FEET)	ROOF	BASE	WALL FINISH	CEIL. FINISH	HEATING/VENTILATION
10	STAIR AREA	12'x15'	CONCRETE	WOOD	BLK DRFT TOP & ADDITIONAL	BLK	8
102	OFFICE	20'x12'	CONCRETE	WOOD	1/2 PAINTED DRYWALL	1/2 PAINTED DRYWALL	6
103	WALKING AREA	6'x12'	CONCRETE	WOOD	1/2 PAINTED DRYWALL	1/2 PAINTED DRYWALL	6
104	STAIR ROOM	5'-6" x 4'	CONCRETE	WOOD	1/2 PAINTED DRYWALL	1/2 PAINTED DRYWALL	6

Notes:

1. OPEN FLOOR DECK ABOVE ROOMS 801, 102, 104 FOR FURNACE AND HOT WATER HEATER
2. RESTROOM TO BE MA. LAV. AND INDUSTRY HANDICAP ACCESSIBLE
3. APPROX. 32 LR. FT. TRENCH DRAIN
4. GULF SEPARATOR
5. KITCHEN, BATH, ELECTR. AND ALL DRAINS TO BE TAKEN TO 5' OUTSIDE BUILDING
6. ALL KITCHEN DOORS TO BE 36" X 80" KNOB
7. 9' X 9' INTERIOR CLOSET IN SERVICE ROOM

96-2611 P

6-12-01

BUILDING PLAN & PERMIT TRANSMITTAL

REQUIRED FOR ALL COMMERCIAL BUILDINGS AND OTHER BUILDINGS NEEDING PERMITS OR PLANS

2665P

CUSTOMER'S NAME

JOB NUMBER 96-2665P

Type of Permit Required			Issuing Authority			Paid for by	Permit Number
State	Yes	No					
Local	Yes	No					
Zoning	Yes	No					
Other	Yes	No					

Applicable Building Code			Specific design and site adjustments that are not included in basic building package on Form 86. (circle applicable situation)				
Live Roof Load		Floor Load	Readi-Mix Footing	Yes	No	If yes, specify affected columns on Form 86.	
Wind Load		Ceiling Load	Fire Walls	Yes	No	If yes, specify location of firewall on Form 86.	
Other Loads SPECIFY:			Attic Draft stop	Yes	No	If yes, specify location of attic drafts stop on Form 86.	
			Plot Plan	Yes	No	See Design Manual Section 6-2 (REQUIRED for all commercial buildings)	

Design or Professional Assistance is Provided By

	Name	Paid for by	Previous Job No.
Design Estimator			
Morton Architect			
Morton Engineer			
Consulting A / E Name, Address & Phone			

NO. of REQUIRED SETS of PLANS			QTY.	IMPORTANT CREW INFORMATION		
			Required			Name & Phone No. of Authorit
STAMPED	Yes	No		Footing inspection	Yes	No
NON - STAMPED	Yes	No		Framing inspection	Yes	No
CUSTOMER APPROVED	Yes	No		Final inspection	Yes	No
CONCRETE FOUNDATION	Yes	No		NOTE: If mechanical plans, interior layouts, etc. are provided by others, forward a copy of approved plan to Morton with order.		
MECHANICAL	Yes	No				

PLANS TARGET DATE: 11 16 11
MONTH DAY YEAR

NOTES: 1. ASAP is NOT a date.

2. If requested date is less than 3 weeks or more than 6 weeks before approximate ship date on Form 12 or required specific date, EXPLAIN BELOW.

MESSAGE BOX

To:	Date:	When all permits are secured, return White & Green Copies of this form along with a copy of the applicable permits to Morton.
From:		

Message

Message content (10 lines of handwriting)

WHITE - GREEN - PINK - GOLDENROD - TO MORTON WITH NEW ORDER YELLOW - TO OFFICE FILE

WHITE - GREEN - TO OFFICE WITH STAMPED PLANS (RETURN WITH COPY OF PERMIT TO MORTON)

WHITE - GREEN - TO SUPERVISOR WITH CONSTRUCTION PLANS

SITE CONDITIONS AT TIME OF SALE

Owner's Name John K. Kuehne/MBI

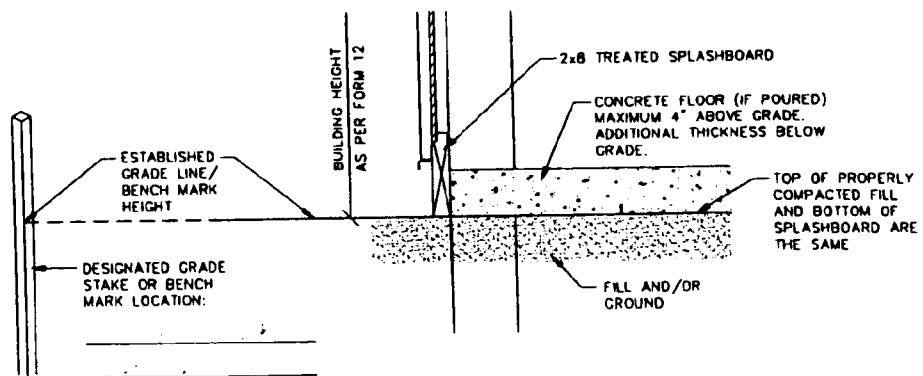
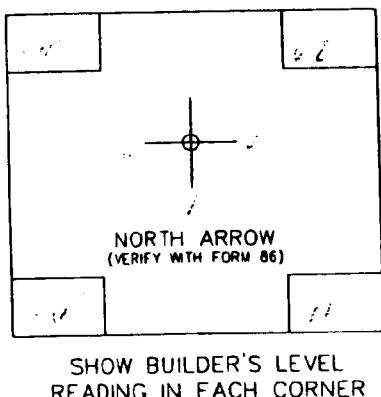
Job Number 95-10678

Before Morton Buildings, Inc. employees or subcontractors receive permission from Morton Buildings, Inc., Morton, Illinois office to work on this site, the following conditions must be satisfied:

- Digging clearances must be on hand from authorities who have jurisdiction over this site.
Phone number to obtain local dig clearance: 309-242-1776
- Private lines (electric, telephone, cable, water or sewer lines) must be identified and marked by Owner. Damages incurred by severing private lines must be repaired at Owner's expense if lines were not marked.
- Tire ruts of construction equipment and delivery trucks are, in most cases, unavoidable. Repairing tire ruts will be at Owner's expense.

The site was inspected on 4/15/01 by John K. Kuehne/MBI
(Date) (List all people present: Sales Consultant, Owner, Subcontractor, etc.)

Building locator flags were placed on the lot aligning the building with True North.



Describe the site as it appears when taking above grade readings and the site preparation work that needs to be done:

Site appears level. There is no fill or ground.

Site appears level. There is no fill or ground.

Site appears level. There is no fill or ground.

RESPONSIBILITY DIVISION. Identify required services that will be provided and paid for by the party <u>initialled</u> in each blank.					
SERVICE	OWNER	MORTON	SERVICE	OWNER	MORTON
Site Engineering (Survey, Water, Soil Bearing)			Gas Service Hookup		
Environmental Impact Study			Water & Sewer Service Hookup		
Percolation Test			Temporary Electrical Service For Construction		
Site Preparation Including:			Telephone, Cable TV Service & Hookup		
Earth Moving			Permanent Electrical Service		
Obstruction Removal			If special digging equipment and/or additional labor is required, it will be charged to the owner at cost plus 15%.		
Buying, Placing & Compacting Fill			Owner's initials: _____		
Snow Removal			Construction Trash Removal and Portable Toilet Facilities will be provided by Morton Buildings, Inc. for above job site.		
Covering or Disconnecting Electrical Lines					
Building/Zoning Permit (Plans Provided by MBI)					

If site is to be prepared by owner, preparation must meet Morton Buildings, Inc. BUILDING SITE SPECIFICATIONS, Form 153A. Owner must acknowledge receiving a copy and insure that his/her excavating contractor will follow these specifications by initialing this space _____.

Owner's Initials _____

HOSPITAL PHONE _____

AMBULANCE PHONE _____

FIRE DEPT. PHONE _____

(Owner's Signature)

(Date)

(Morton Sales Consultant's Signature)

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

DAVID J. KARCEWSKI,)
an adult individual,)
PLAINTIFF,)
v.) No. 03-_____ -CD
MORTON BUILDINGS, INC.,)
an Illinois Corporation;)
DEFENDANT.)

VERIFICATION

I, David J. Karcewski, Plaintiff, does hereby swear and affirm that I have read the foregoing and attached CIVIL COMPLAINT in the above captioned matter, and that to the best of my information, knowledge and belief, the facts as set forth therein are true and correct. Furthermore, that I make this statement subject to the penalties of 18 Pa.C.S.A. 4101, relating to unsworn falsification to authorities.

So made this 28 day of January, 2003.



David J. Karcewski, Plaintiff

E
Aug pd.
01/10/45 85.00
300 Aug 1688

April 20, 2006

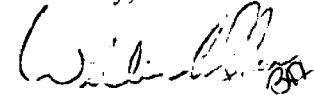
Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

Re: David Karczewski
Vs.
Morton Buildings, Inc.
No. 03-135-CD
Superior Court No. 44 WDA 2006

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. It is being re-sent per your order of March 31, 2006. Please also find enclosed two transcripts, which were completed and filed April 17, 2006.

Sincerely,



William A. Shaw
Prothonotary/Clerk of Courts

Fredric J. Ammerman, P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Theron G. Noble, Esq.
301 E. Pine Street
Clearfield, PA 16830

John R. Ryan, Esq.
PO Box 1
15 N. Front Street
Clearfield, PA 16830

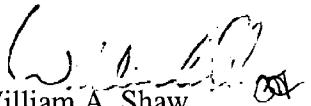
David Karczewski
Vs.
Morton Buildings, Inc.

Court No. 03-135-CD; Superior Court No. 44 WDA 2006

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on April 20, 2006.

Sincerely,


William A. Shaw
Prothonotary/Clerk of Courts

Date: 04/26/2006

Time: 02:38 PM

Page 1 of 3

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Judge
02/03/2003	Filing: Civil Complaint Paid by: Noble, Theron G. (attorney for Karczewski, David J.) Receipt number: 1854931 Dated: 02/03/2003 Amount: \$85.00 (Check) 3 Cert. to Atty. No Judge
02/07/2003	Acceptance of Service, Complaint accepted on behalf of Defendant Morton Buildings, Inc., filed by s/John R. Ryan, Esq. No CC No Judge
02/24/2003	Answer, New Matter and Counterclaim. filed by s/John R. Ryan, Esquire Verification s/Bill Shanahan, Manager 2 cc Atty Ryan No Judge
03/14/2003	Reply To New Matter and Answer To Counter-Claim. filed by s/Theron G. Noble, Esquire Notice of Service no cc No Judge
03/19/2003	Verification. s/David J. Karczewski Notice of Service no cc No Judge
04/23/2003	Certificate of Service, Notice of Deposition upon: Defendant via Defendant's Attorney. filed by s/John R. Ryan, Esq. no cc No Judge
11/24/2003	Notice of Service, Plaintiff's First Set Of Discovery Materials upon: JOHN R. RYAN, ESQUIRE filed by, s/THERON G. NOBLE, ESQUIRE no cc No Judge
01/28/2004	Motion to Compel, filed by Atty. Noble no cert. copies. No Judge
02/02/2004	RULE TO SHOW CAUSE, NOW, this 27th day of January, 2004, issued upon the DEFENDANT. RULE RETURNABLE, for filing Written Response, is set for the 19th day of Feb. 2004 and Argument on the Petition set for the 23rd day of February, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 2 cc to Atty Noble Fredric Joseph Ammerman
02/09/2004	Notice of Service, Rule To Show Cause upon John R. Ryan, Esquire filed by, s/Theron G. Noble, Esq. no cc Fredric Joseph Ammerman
02/13/2004	Answer of Defendant to Motion to Compel, filed by Atty. Ryan 3 Cert. to Atty. Fredric Joseph Ammerman
	Certificate of Service, filed by Atty. Ryan Served copy of Defendant's Answer to Plaintiff's Motion to Compel on Atty. Noble Fredric Joseph Ammerman
02/25/2004	ORDER, NOW, this 23rd day of February, 2004, following Argument on Plaintiff's Motion to Compel, the Motion is DENIED in regard to Interrogatories 8,9,10,15,16,22,23,24, and 26. The Motion to Compel is GRANTED in regard to Interrogatory 11. Defendant shall have no more than 45 days from this date to provide a more specific response to Interrogatory 11. by the Court, s/FJA, P.J. 1 cc Atty Noble, Ryan Fredric Joseph Ammerman
03/08/2005	Certificate of Readiness For Non-Jury Trial, filed by s/ John R. Ryan Esquire. no CC Fredric Joseph Ammerman
04/27/2005	Order, AND NOW, this 26th day of April, 2005, it is the ORDER of the Court that a Pre-Trial Conference shall be held on the 13th day of May, 2005, in Chambers at 2:00 p.m. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. CC to Attys Noble & Ryan Fredric Joseph Ammerman
07/21/2005	Order, this 20th day of July, 2005, it is the Order of the Court that Civil Non-Jury Trial has been scheduled for Tuesday, August 2, 2005 and Wednesday, August 3, 2005 at 9:00 a.m. each day in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, Ryan Fredric Joseph Ammerman

Date: 04/26/2006

Time: 02:38 PM

Page 2 of 3

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Judge	
08/04/2005	Order, this 3rd day of August, 2005, following conclusion of civil nonjury trial, it is the Order of this Court that counsel for Plaintiff provide the Court with brief within no more than 20 days from today's date; and upon receipt of Plaintiff's brief, counsel for Defendant shall have 20 days thereafter to respond in kind. By The Court, /s/ Fredric J. Ammerman, President Judge. 1CC Atty: Noble, Ryan	Fredric Joseph Ammerman
11/09/2005	Order NOW, this 8th day of November 2005, following nonjury trial and the receipt of the parties briefs, it is the finding and ORDER of this Court as follows: 1. the Court finds that the Defendant has breached the contract entered into between the parties by not constructing the cement floor in a good and workmanlike manner, see orignal for details. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty: Noble and Ryan.	Fredric Joseph Ammerman
11/17/2005	Motion For Post-Trial Relief, filed by s/ John R. Ryan, Esquire. 4CC Atty. Ryan	Fredric Joseph Ammerman
11/21/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC. in the above captioned matter on the following party on the 18th day of November 2005 to Theron G. Noble Esq. filed by s/ John R. Ryan Esq. No CC. Order AND NOW, this 18th day of November, 2005, upon consideration of the foregoing Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that said Motion be scheduled for Argument the 16th day of December, 2005, at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Ryan.	Fredric Joseph Ammerman
11/23/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on Theron G. Noble Esq on the 18th day of November, 2005 filed by s/ John R. Ryan Esq. No CC.	Fredric Joseph Ammerman
12/15/2005	Order AND NOW, this 9th day of December, 2005, counsel for both parties having indicated that they wish to waive oral argument on the Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that the Argument scheduled for December 16, 2005 at 11:00 a.m. be and is hereby cancelled. The Court will issue its ruling on Motion for Post-Trial without argument. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty: Noble, and Ryan.	Fredric Joseph Ammerman
12/19/2005	Order NOW, this 16th day of December, 2005, it is the ORDER of this Court that the Defendant's Motion for Post Trial Relief filed November 17, 2005 be and is hereby DISMISSED. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty: Noble and Ryan.	Fredric Joseph Ammerman
12/28/2005	Filing: Praeclipe for Entry of Judgment Paid by: Ryan, John R. (attorney for Fredric Joseph Ammerman Morton Buildings, Inc.) Receipt number: 1911832 Dated: 12/28/2005 Amount: \$20.00 (Check) Judgment is entered in favor of the Plaintiff and against the Defendant. Two CC Attorney Ryan Notice to Attorneys Ryan and Noble	Fredric Joseph Ammerman
12/29/2005	Filing: Praeclipe To Enter Judgment Paid by: Noble, Theron G. (attorney for Karczewski, David J) Receipt number: 1911857 Dated: 12/29/2005 Amount: \$20.00 (Check) Judgment in favor of Plaintiff and against Defendant in the amount of \$26,175. Filed by s/ Theron G. Noble, Esquire. No CC, Notice to Atty Ryan Judgment entered against the Defendant in the amount \$26,175.00 plus interest and costs Notice to Atty. Ryan.	Fredric Joseph Ammerman

Date: 04/29/2006

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:38 PM

ROA Report

Page 3 of 3

Case: 2003-00135-CD

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

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

APR 20 2006

Civil Other

Attest.


Prothonotary/
Clerk of Courts

Date		Judge
01/03/2006	Filing: Appeal to High Court Paid by: Ryan, John R. (attorney for Morton Buildings, Inc.) Receipt number: 1911915 Dated: 01/03/2006 Amount: \$45.00 (Check) Notice of Appeal, filed by s/ John R. Ryan, Esquire. 6CC Atty., 1CC & Ck. Fredric Joseph Ammerman for \$60.00 to Superior Crt. Request For Transcript, filed by s/ John R. Ryan, Esquire. 7CC Atty. Ryan	Fredric Joseph Ammerman
01/06/2006	Order NOW, this 5th day of January, 2006, the Court Having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Morton Buildings, Inc., Appellant, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in RULE 1925 (b) of the Rules of Appellate Procedure. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
01/09/2006	Statement of Matters Complained of Pursuant to Pa. R.A.P. Rule 1025(b). Filed by s/ John R. Ryan, Esquire. 5CC Atty. Ryan	Fredric Joseph Ammerman
01/10/2006	Certificate of Service, filed. Served a certified copy of the Statement of Matters Complained of filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above-captioned matter on the 10th day of January 2006 to The Honorable Fredric J. Ammerman and Theron G. Noble Esq., filed by s/ John R Ryan Esq. No CC.	Fredric Joseph Ammerman
01/11/2006	Appeal Docket Sheet filed. 44 WDA 2006	Fredric Joseph Ammerman
03/16/2006	Opinion, March 16, 2006, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys Ryan, Noble One CC D. Mikesell and Law Library	Fredric Joseph Ammerman
03/17/2006	Appeal mailed to Superior Court March 17, 2006. Letters to counsel of record. Certified Mail Receipt, filed. Record mail to Superior Court.	Fredric Joseph Ammerman
03/22/2006	Certified Mail Receipt, filed. To Superior Court of PA, received 3-20-2006	Fredric Joseph Ammerman
04/13/2006	Order, Certified From the Record, In The Superior Court of Penna., Ordered that the record is Remanded to the trial court for a period of time not to exceed 40 days during which time the trial court shall insure that all transcripts ordered and paid for by appellant have been included in the record. The briefing schedule is Suspended and shall be reset following the return of the record to this court. Jurisdiction of this court is retained pending compliance with this Court's Order. Prothonotary is Directed to transmit a copy of the instant application to the trial court along with a copy of this order. Per Curiam, dated 4/10/06. copy to Judge Ammerman Certificate of Contents of Remanded Record and Notice of Remand, Record to be returned to Superior Court on or before May 22, 2006 Record is remanded April 12, 2006	Fredric Joseph Ammerman
04/17/2006	Transcript of Proceedings, Civil Non-Jury Trial August 2, 2005, filed. Transcript of Proceedings, Civil Non-Jury Trial August 3, 2005, filed.	Fredric Joseph Ammerman
04/20/2006	Mailed record with transcripts to Superior Court April 20, 2006. Letters to Attorneys of record.	Fredric Joseph Ammerman

FILED

APR 20 2006

William A. Shaw
Prothonotary/Clerk of Courts

03-135-C0

7002 2030 0004 5014 8064

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT <i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit our website at www.usps.com	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 11.40
Sent To: Superior Court of PA - Office of the Prothonotary Street, Apt. No.; or PO Box No. 600 Grant Building City, State, ZIP+4 Pittsburgh, PA 15219	

Postmark: 04/20/06
03-135-C0

USPS Form 3800, June 2002
See www.usps.com for instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15214

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X *W. J. Shaw*

Agent
 Addressee

B. Received by (Printed Name)

W. J. Shaw

C. Date of Delivery

10/23/04

D. Is delivery address different from item 1?

If YES, enter delivery address below: Yes
 No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number

(Transfer from service label)

7002 2030 0004 5014 8064

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

03-135-CD

10/23/04
W. J. Shaw
Prothonotary/Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID J. KARCEWSKI, :
an adult individual, :
Plaintiff :
vs. : No. 03 - 135 - C.D.
MORTON BUILDINGS, INC., :
Defendant :
:

**PRAECIPE TO SETTLE,
DISCONTINUE AND END**

Filed on behalf of
Plaintiff and Defendant

Counsel of Record for
this Party:

John R. Ryan
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

0/3.46 cm (u) 3CC + 3 Cert of
Apr 28 2000 SC issued to
Atty Ryan
Copy to C/A

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

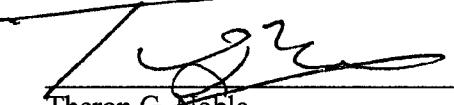
DAVID J. KARCEWSKI, an adult individual,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03 – 135 – C.D.
	:	
MORTON BUILDINGS, INC., Defendant	:	
	:	

PRAECIPE

TO: WILLIAM SHAW, PROTHONOTARY

Please mark the above-captioned case settled, discontinued and ended.

FERRARACCIO & NOBLE


Theron G. Noble
Attorney for Plaintiff

BELIN & KUBISTA


John R. Ryan
Attorney for Defendant

CLEARFIELD, PENNSYLVANIA 16830

U. S. BOX 1

15 NORTH BRONX STREET

ATTORNEYS AT LAW

BEILIN & KUBISTA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Copy

David J Karczewski

Vs. No. 2003-00135-CD
Morton Buildings, Inc.

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 April 28, 2006, marked:

Settled, discontinued and ended

\$105.00 paid by Theron G. Noble Esq
\$20.00 paid by John R Ryan Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 28th day of April A.D. 2006.



William A. Shaw, Prothonotary

03-135-C.D

IN THE SUPERIOR COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DOCKET NO. 44 WDA 2006

DAVID J. KARCEWSKI
Appellee

FILED

MAR 3 1 2005

vs.

MORTON BUILDINGS, INC.
Appellant

PITTSBURGH
S. L. K. 2005

APPLICATION FOR RELIEF – EXTENSION OF TIME

Appeal from the Order of the Court of Common Pleas of
Clearfield County, Pennsylvania, dated December 16, 2005,
filed to No. 03-135-C.D.

John R. Ryan, Esquire
Pa. I.D. No. 38739
Belin & Kubista
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972
Attorney for Appellant

APPLICATION FOR RELIEF—EXTENSION OF TIME

NOW COMES, Morton Buildings, Inc, Appellant above named, and by its Attorneys, Belin & Kubista, files its Application for Relief pursuant to Pennsylvania Rule of Appellate Procedure 123 and avers as follows:

1. Appellant filed the above captioned appeal on January 3, 2006, and on the same date filed and submitted a Request for Transcript to the Court Reporter for Clearfield County.
2. As of the time this Application is prepared, the transcript of the trial in the lower court has not been completed and filed.
3. Despite the fact that the transcript has not been completed and filed, the Clearfield County Prothonotary sent the lower court record to this Court, which resulted in the issuance of a briefing schedule requiring Appellant to file its brief and reproduced record on or before May 1, 2006.
4. Appellant is unable to properly prepare the reproduced record and its brief without the transcript.
5. Appellant has no knowledge as to when the transcript will be completed and filed.

WHEREFORE, Appellant respectfully requests that the Court rescind the briefing schedule and issue an order directing that the Appellant's brief be filed forty (40) days after

completion and filing of the transcript.

Respectfully submitted,

BELIN & KUBISTA



John R. Ryan
Attorney for Appellant

IN THE SUPERIOR COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID J. KARCEWSKI,
Appellee

vs.

MORTON BUILDINGS, INC.,
Appellant

DOCKET NO. 44 WDA 2006

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below which service satisfies the requirements of Pa.R.A.P. 121:

Service by first class mail addressed as follows:

Theron G. Noble, Esq. (814) 765- 4990
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16930
(Counsel for David J. Karczewski, Appellee)

Dated: 3/29/06



John R. Ryan, Esq.
Attorney ID No. 38739
Belin & Kubista
15 North Front Street
P.O. Box 1
Clearfield, PA 16930
Counsel for Morton Buildings, Inc., Appellant
(814) 765- 8972

Date: 04/19/2006

Time: 02:54 PM

Page 1 of 1

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Selected Items	Judge
03/16/2006	Opinion, March 16, 2006, filed. BY THE COURT: /s/Fredric J. Ammerman, Fredric Joseph Ammerman P.J. One CC Attys Ryan, Noble One CC D. Mikesell and Law Library	
03/17/2006	X Appeal mailed to Superior Court March 17, 2006. Letters to counsel of record. 34 Certified Mail Receipt, filed. Record mail to Superior Court.	Fredric Joseph Ammerman
03/22/2006	35 Certified Mail Receipt, filed. To Superior Court of PA, received 3-20-2006	Fredric Joseph Ammerman
04/13/2006	36 Order, Certified From the Record, In The Superior Court of Penna., Ordered that the record is Remanded to the trial court for a period of time not to exceed 40 days during which time the trial court shall insure that all transcripts ordered and paid for by appellant have been included in the record. The briefing schedule is Suspended and shall be reset following the return of the record to this court. Jurisdiction of this court is retained pending complaince with this Court's Order. Prothonotary is Directed to transmit a copy of the instant application to the trial court along with a copy of this order. Per Curiam, dated 4/10/06. copy to Judge Ammerman 37 Certificate of Contents of Remanded Record and Notice of Remand, Record to be returned to Superior Court on or before May 22, 2006 Record is remanded April 12, 2006	Fredric Joseph Ammerman
04/17/2006	38 Transcript of Proceedings, Civil Non-Jury Trial August 2, 2005, filed. 39 Transcript of Proceedings, Civil Non-Jury Trial August 3, 2005, filed.	Fredric Joseph Ammerman Fredric Joseph Ammerman

Date: 04/19/2006

Time: 11:21 AM

Page 1 of 1

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2005-00001-CD

Current Judge: No Judge

Commonwealth of Pennsylvania vs. Richard D. Heberling

Judgment

Date	Judgment	Judge
01/03/2005	New Case Filed. Filing: Commonwealth Lien Paid by: Commonwealth of Pennsylvania (plaintiff) Receipt number: 1893069 Dated: 01/03/2005 Amount: \$25.00 (Check) 1 cc to Plff. Lien entered against Def. inthe amount \$1691.84	No Judge No Judge

March 17, 2006

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

Re: David Karczewski, an adult individual
Vs.
Morton Buildings, Inc., an Illinois corporation
No. 03-135-CD
Superior Court No. 44 WDA 2006

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Fredric J. Ammerman, P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Theron G. Noble
301 East Pine Street
Clearfield, PA 16830

John R. Ryan
PO Box 1
Clearfield, PA 16830

David Karczewski
Vs.
Morton Buildings, Inc.

Court No. 03-135-CD; Superior Court No. 44 WDA 2006

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on March 17, 2006.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Date: 03/17/2006

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:19 AM

ROA Report

Page 1 of 3

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Judge	
02/03/2003	Filing: Civil Complaint Paid by: Noble, Theron G. (attorney for Karczewski, David J.) Receipt number: 1854931 Dated: 02/03/2003 Amount: \$85.00 (Check) 3 Cert. to Atty.	
02/07/2003	Acceptance of Service, Complaint accepted on behalf of Defendant Morton Buildings, Inc., filed by s/John R. Ryan, Esq. No CC	
02/24/2003	Answer, New Matter and Counterclaim. filed by s/John R. Ryan, Esquire Verification s/Bill Shanahan, Manager 2 cc Atty Ryan	
03/14/2003	Reply To New Matter and Answer To Counter-Claim. filed by s/Theron G. Noble, Esquire Notice of Service no cc	
03/19/2003	Verification. s/David J. Karczewski Notice of Service no cc	
04/23/2003	Certificate of Service, Notice of Deposition upon: Defendant via Defendant's Attorney. filed by s/John R. Ryan, Esq. no cc	
11/24/2003	Notice of Service, Plaintiff's First Set Of Discovery Materials upon: JOHN R. RYAN, ESQUIRE filed by, s/HERON G. NOBLE, ESQUIRE no cc	
01/28/2004	Motion to Compel, filed by Atty. Noble no cert. copies.	
02/02/2004	RULE TO SHOW CAUSE, NOW, this 27th day of January, 2004, issued upon the DEFENDANT. RULE RETURNABLE, for filing Written Response, is set for the 19th day of Feb. 2004 and Argument on the Petition set for the 23rd day of February, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 2 cc to Atty Noble	Fredric Joseph Ammerman
02/09/2004	Notice of Service, Rule To Show Cause upon John R. Ryan, Esquire filed by, s/Theron G. Noble, Esq. no cc	Fredric Joseph Ammerman
02/13/2004	Answer of Defendant to Motion to Compel, filed by Atty. Ryan 3 Cert. to Atty.	Fredric Joseph Ammerman
	Certificate of Service, filed by Atty. Ryan Served copy of Defendant's Answer to Plaintiff's Motion to Compel on Atty. Noble	Fredric Joseph Ammerman
02/25/2004	ORDER, NOW, this 23rd day of February, 2004, following Argument on Plaintiff's Motion to Compel, the Motion is DENIED in regard to Interrogatories 8,9,10,15,16,22,23,24, and 26. The Motion to Compel is GRANTED in regard to Interrogatory 11. Defendant shall have no more than 45 days from this date to provide a more specific response to Interrogatory 11. by the Court, s/FJA, P.J. 1 cc Atty Noble, Ryan	Fredric Joseph Ammerman
03/08/2005	Certificate of Readiness For Non-Jury Trial, filed by s/ John R. Ryan Esquire. no CC	Fredric Joseph Ammerman
04/27/2005	Order, AND NOW, this 26th day of April, 2005, it is the ORDER of the Court that a Pre-Trial Conference shall be held on the 13th day of May, 2005, in Chambers at 2:00 p.m. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. CC to Attys Noble & Ryan	Fredric Joseph Ammerman
07/21/2005	Order, this 20th day of July, 2005, it is the Order of the Court that Civil Non-Jury Trial has been scheduled for Tuesday, August 2, 2005 and Wednesday, August 3, 2005 at 9:00 a.m. each day in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty: Noble, Ryan	Fredric Joseph Ammerman
08/04/2005	Order, this 3rd day of August, 2005, following conclusion of civil nonjury trial, it is the Order of this Court that counsel for Plaintiff provide the Court with brief within no more than 20 days from today's date; and upon receipt of Plaintiff's brief, counsel for Defendant shall have 20 days thereafter to respond in kind. By The Court, /s/ Fredric J. Ammerman, President Judge. 1CC Atty: Noble, Ryan	Fredric Joseph Ammerman

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Judge
11/09/2005	Order NOW, this 8th day of November 2005, following nonjury trial and the receipt of the parties briefs, it is the finding and ORDER of this Court as follows: 1. the Court finds that the Defendant has breached the contract entered into between the parties by not constructing the cement floor in a good and workmanlike manner, see oringal for details. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty: Noble and Ryan.
11/17/2005	Motion For Post-Trial Relief, filed by s/ John R. Ryan, Esquire. 4CC Atty. Fredric Joseph Ammerman Ryan
11/21/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC. in the above captioned matter on the following party on the 18th day of November 2005 to Theron G. Noble Esq. filed by s/ John R. Ryan Esq. No CC. Order AND NOW, this 18th day of November, 2005, upon consideration of the foregoing Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that said Motion be scheduled for Argument the 16th day of December, 2005, at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Ryan.
11/23/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on Theron G. Noble Esq on the 18th day of November, 2005 filed by s/ John R. Ryan Esq. No CC.
12/15/2005	Order AND NOW, this 9th day of December, 2005, counsel for both parties having indicated that they wish to waive oral argument on the Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that the Argument scheduled for December 16, 2005 at 11:00 a.m. be and is hereby cancelled. The Court will issue its ruling on Motion for Post-Trial without argument. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty: Noble, and Ryan.
12/19/2005	Order NOW, this 16th day of December, 2005, it is the ORDER of this Court that the Defendant's Motion for Post Trial Relief filed November 17, 2005 be and is hereby DISMISSED. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty: Noble and Ryan.
12/28/2005	Filing: Praecipe for Entry of Judgment Paid by: Ryan, John R. (attorney for Fredric Joseph Ammerman Morton Buildings, Inc.) Receipt number: 1911832 Dated: 12/28/2005 Amount: \$20.00 (Check) Judgment is entered in favor of the Plaintiff and against the Defendant. Two CC Attorney Ryan Notice to Attorneys Ryan and Noble
12/29/2005	Filing: Praecipe To Enter Judgment Paid by: Noble, Theron G. (attorney for Karczewski, David J) Receipt number: 1911857 Dated: 12/29/2005 Amount: \$20.00 (Check) Judgment in favor of Plaintiff and against Defendant in the amount of \$26,175. Filed by s/ Theron G. Noble, Esquire. No CC, Notice to Atty Ryan Judgment entered against the Defendant in the amount \$26,175.00 plus interest and costs Notice to Atty. Ryan.
01/03/2006	Filing: Appeal to High Court Paid by: Ryan, John R. (attorney for Morton Buildings, Inc.) Receipt number: 1911915 Dated: 01/03/2006 Amount: \$45.00 (Check) Notice of Appeal, filed by s/ John R. Ryan, Esquire. 6CC Atty., 1CC & Ck. Fredric Joseph Ammerman for \$60.00 to Superior Crt. Request For Transcript, filed by s/ John R. Ryan, Esquire. 7CC Atty. Ryan Fredric Joseph Ammerman

Date: 03/17/2006

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:19 AM

ROA Report

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Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Judge	
01/06/2006	Order NOW, this 5th day of January, 2006, the Court Having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Morton Buildings, Inc., Appellant, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in RULE 1925 (b) of the Rules of Appellate Procedure. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty: Noble and Ryan.	Fredric Joseph Ammerman
01/09/2006	Statement of Matters Complained of Pursuant to Pa. R.A.P. Rule 1025(b). Filed by s/ John R. Ryan, Esquire. 5CC Atty. Ryan	Fredric Joseph Ammerman
01/10/2006	Certificate of Service, filed. Served a certified copy of the Statement of Matters Complained of filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above-captioned matter on the 10th day of January 2006 to The Honorable Fredric J. Ammerman and Theron G. Noble Esq., filed by s/ John R Ryan Esq. No CC.	Fredric Joseph Ammerman
01/11/2006	Appeal Docket Sheet filed.	Fredric Joseph Ammerman
03/16/2006	Opinion, March 16, 2006, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Atty Ryan, Noble One CC D. Mikesell and Law Library	Fredric Joseph Ammerman
03/17/2006	Appeal mailed to Superior Court March 17, 2006. Letters to counsel of record.	Fredric Joseph Ammerman

2003-00135-CD-17

MAR 1 2006

Attest:

Clearfield County Courts

Date: 01/25/2006

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:06 PM

ROA Report

Page 1 of 1

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Selected Items	Judge
12/15/2005	Order AND NOW, this 9th day of December, 2005, counsel for both parties having indicated that they wish to waive oral argument on the Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that the Argument scheduled for December 16, 2005 at 11:00 a.m. be and is hereby cancelled. The Court will issue its ruling on Motion for Post-Trial without argument. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble, and Ryan.	Fredric Joseph Ammerman
12/19/2005	Order NOW, this 16th day of December, 2005, it is the ORDER of this Court that the Defendant's Motion for Post Trial Relief filed November 17, 2005 be and is hereby DISMISSED. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
12/28/2005	Filing: Praeclipe for Entry of Judgment Paid by: Ryan, John R. (attorney for Fredric Joseph Ammerman Morton Buildings, Inc.) Receipt number: 1911832 Dated: 12/28/2005 Amount: \$20.00 (Check) Judgment is entered in favor of the Plaintiff and against the Defendant. Two CC Attorney Ryan Notice to Attorneys Ryan and Noble	Fredric Joseph Ammerman
12/29/2005	Filing: Praeclipe To Enter Judgment Paid by: Noble, Theron G. (attorney for Karczewski, David J) Receipt number: 1911857 Dated: 12/29/2005 Amount: \$20.00 (Check) Judgment in favor of Plaintiff and against Defendant in the amount of \$26,175. Filed by s/ Theron G. Noble, Esquire. No CC, Notice to Atty Ryan Judgment entered against the Defendant in the amount \$26,175.00 plus interest and costs Notice to Atty. Ryan.	Fredric Joseph Ammerman
01/03/2006	Filing: Appeal to High Court Paid by: Ryan, John R. (attorney for Morton Buildings, Inc.) Receipt number: 1911915 Dated: 01/03/2006 Amount: \$45.00 (Check) Notice of Appeal, filed by s/ John R. Ryan, Esquire. 6CC Atty., 1CC & Ck. Fredric Joseph Ammerman for \$60.00 to Superior Crt.	Fredric Joseph Ammerman
01/06/2006	Request For Transcript, filed by s/ John R. Ryan, Esquire. 7CC Atty. Ryan	Fredric Joseph Ammerman
	Order NOW, this 5th day of January, 2006, the Court Having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Morton Buildings, Inc., Appellant, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in Rule 1925 (b) of the Rules of Appellate Procedure. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
01/09/2006	Statement of Matters Complained of Pursuant to Pa. R.A.P. Rule 1025(b). Filed by s/ John R. Ryan, Esquire. 5CC Atty. Ryan	Fredric Joseph Ammerman
01/10/2006	Certificate of Service, filed. Served a certified copy of the Statement of Matters Complained of filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above-captioned matter on the 10th day of January 2006 to The Honorable Fredric J. Ammerman and Theron G. Noble Esq., filed by s/ John R Ryan Esq. No CC.	Fredric Joseph Ammerman
01/11/2006	Appeal Docket Sheet filed.	Fredric Joseph Ammerman

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Judge
02/03/2003 ✓ Filing: Civil Complaint Paid by: Noble, Theron G. (attorney for Karczewski, David J.) Receipt number: 1854931 Dated: 02/03/2003 Amount: \$85.00 (Check) 3 Cert. to Atty.	No Judge 16
02/07/2003 ✓ Acceptance of Service, Complaint accepted on behalf of Defendant Morton Buildings, Inc., filed by s/John R. Ryan, Esq. No CC	No Judge 2
02/24/2003 ✓ Answer, New Matter and Counterclaim. filed by s/John R. Ryan, Esquire Verification s/Bill Shanahan, Manager 2 cc Atty Ryan	No Judge 11
03/14/2003 ✓ Reply To New Matter and Answer To Counter-Claim. filed by s/Theron G. Noble, Esquire Notice of Service no cc	No Judge 6
03/19/2003 ✓ Verification. s/David J. Karczewski Notice of Service no cc	No Judge 2
04/23/2003 ✓ Certificate of Service, Notice of Deposition upon: Defendant via Defendant's Attorney. filed by s/John R. Ryan, Esq. no cc	No Judge 1
11/24/2003 ✓ Notice of Service, Plaintiff's First Set Of Discovery Materials upon: JOHN R. RYAN, ESQUIRE filed by, s/HERON G. NOBLE, ESQUIRE no cc	No Judge 1
01/28/2004 ✓ Motion to Compel, filed by Atty. Noble no cert. copies.	No Judge 14
02/02/2004 ✓ RULE TO SHOW CAUSE, NOW, this 27th day of January, 2004, issued upon the DEFENDANT. RULE RETURNABLE, for filing Written Response, is set for the 19th day of Feb. 2004 and Argument on the Petition set for the 23rd day of February, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 2 cc to Atty Noble	Fredric Joseph Ammerman /
02/09/2004 ✓ Notice of Service, Rule To Show Cause upon John R. Ryan, Esquire filed by, s/Theron G. Noble, Esq. no cc	Fredric Joseph Ammerman /
02/13/2004 ✓ Answer of Defendant to Motion to Compel, filed by Atty. Ryan 3 Cert. to Atty.	Fredric Joseph Ammerman 7
✓ Certificate of Service, filed by Atty. Ryan Served copy of Defendant's Answer to Plaintiff's Motion to Compel on Atty. Noble	Fredric Joseph Ammerman 2
02/25/2004 ✓ ORDER, NOW, this 23rd day of February, 2004, following Argument on Plaintiff's Motion to Compel, the Motion is DENIED in regard to Interrogatories 8,9,10,15,16,22,23,24, and 26. The Motion to Compel is GRANTED in regard to Interrogatory 11. Defendant shall have no more than 45 days from this date to provide a more specific response to Interrogatory 11. by the Court, s/FJA, P.J. 1 cc Atty Noble, Ryan	Fredric Joseph Ammerman /
03/08/2005 ✓ Certificate of Readiness For Non-Jury Trial, filed by s/ John R. Ryan Esquire. no CC	Fredric Joseph Ammerman /
04/27/2005 ✓ Order, AND NOW, this 26th day of April, 2005, it is the ORDER of the Court that a Pre-Trial Conference shall be held on the 13th day of May, 2005, in Chambers at 2:00 p.m. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. CC to Attys Noble & Ryan	Fredric Joseph Ammerman /
07/21/2005 ✓ Order, this 20th day of July, 2005, it is the Order of the Court that Civil Non-Jury Trial has been scheduled for Tuesday, August 2, 2005 and Wednesday, August 3, 2005 at 9:00 a.m. each day in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman /

Current Judge: Fredric Joseph Ammerman

David J Karczewski vs. Morton Buildings, Inc.

Civil Other

Date	Judge
08/04/2005	Fredric Joseph Ammerman /
11/09/2005	Fredric Joseph Ammerman 3
11/17/2005	Fredric Joseph Ammerman 7
11/21/2005	Fredric Joseph Ammerman 2
11/23/2005	Fredric Joseph Ammerman 2

Order, this 3rd day of August, 2005, following conclusion of civil nonjury trial, it is the Order of this Court that counsel for Plaintiff provide the Court with brief within no more than 20 days from today's date; and upon receipt of Plaintiff's brief, counsel for Defendant shall have 20 days thereafter to respond in kind. By The Court, /s/ Fredric J. Ammerman, President Judge.
1CC Atty: Noble, Ryan

Order NOW, this 8th day of November 2005, following nonjury trial and the receipt of the parties briefs, it is the finding and ORDER of this Court as follows: 1. the Court finds that the Defendant has breached the contract entered into between the parties by not constructing the cement floor in a good and workmanlike manner, see oringal for details. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty: Noble and Ryan.

Motion For Post-Trial Relief, filed by s/ John R. Ryan, Esquire. 4CC Atty. Fredric Joseph Ammerman

Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC. in the above captioned matter on the following party on the 18th day of November 2005 to Theron G. Noble Esq. filed by s/ John R. Ryan Esq. No CC.

Order AND NOW, this 18th day of November, 2005, upon consideration of the foregoing Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that said Motion be scheduled for Argument the 16th day of December, 2005, at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Ryan.

Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on Theron G. Noble Esq on the 18th day of November, 2005 filed by s/ John R. Ryan Esq. No CC.