

03-583-CD
Craig W. DeBower vs. United Electric Cooperative



GLENN M. WALTERS

PROTHONOTARY

Butler County

GLADYS E. LEECH
Deputy
KATHERINE RAPP
Second Deputy
LEE A. MONTGOMERY
Solicitor

P.O. BOX 1208
TELEPHONE: (724) 284-5214

BUTLER, PA 16003-1208

TDD USERS CALL: (724) 284-5473

April 16, 2003

William A. Shaw
Prothonotary
P.O. Box 549
Clearfield, PA 16830

Dear Mr. Shaw,

Enclosed is a scanned copy of a pleading which is certified. It was scanned in at the time we received it. As soon as we receive the original from the court we will forward to you.

This case is being transferred to Clearfield County as per order of court dated 4/8/03.

Sincerely,

Donna L. Harp

DLH

Date: 04/21/2003

Clearfield County Court of Common Pleas

NO. 1858851

Time: 12:56 PM

Receipt

Page 1 of 1

Received of: United Electric Cooperative, Inc. (defendant)

\$ 0.00

Zero and 00/100 Dollars

Case: 2003-00583-CD	Defendant: United Electric Cooperative, Inc.	Amount
Civil Complaint - Transfer from Another County		0.00
Billable		
Total:		0.00

Payment Method: Cash

William A. Shaw, Prothonotary/Clerk of Courts

By: _____

Clerk: BHUDSON

Deputy Clerk

April 21, 2003

Craig A. Markham, Esq.
Elderkin, Martin, Kelly & Messina
150 East Eighth Street
Erie, PA 16501

Dear Mr. Markham, Esq.

On April 21, 2003, my office received a case transferred from Butler County, their case number 2002-11333, Craig W. DeBower vs. United Electric Cooperative, Inc. et al. The case was filed into Clearfield County and assigned the number 03-583-CD. Please remit our filing fee of \$70.00 for the transfer of this case. Please note, no further filings can be filed into record regarding this case until the filing fee is received. If you have any questions, please contact me at (814) 765-2641, ext. 1331.

Sincerely,

William A. Shaw
Prothonotary

Date: 4/28/2003

Clearfield County Court of Common Pleas

NO. 1859210

Time: 08:59 AM

Receipt

Page 1 of 1

Received of: Markham, Craig A. Esq (attorney for United Electri

\$ 70.00

Seventy and 00/100 Dollars

Case: 2003-00583-CD	Defendant: United Electric Cooperative, Inc.	Amount
Civil Complaint - Transfer from Another County		70.00
Total:		70.00

PAID
4/28/03

Check: 3461

Payment Method: Check

William A. Shaw, Prothonotary/Clerk of Courts

Amount Tendered: 70.00

By:

Clerk: BHUDSON

Duplicate

Deputy Clerk

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

P.O. Box 549
 CLEARFIELD, PENNSYLVANIA 16830
 (814) 765-2641 Ext. 1330
 FAX(814)-765-7659

APR 23 2003

April 21, 2003

Craig A. Markham, Esq.
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 Erie, PA 16501

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Sincerely,

William A. Shaw
 Prothonotary

Ad 4-23-03
 #3461

IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,

Plaintiff,

v

UNITED ELECTRIC COOPERATIVE, INC.
and STEPHEN A. MARSHALL

Defendants.

AD 02-11333

Civil Action No.:

Complaint in Civil Action 41

PROTHONOTARY'S
OFFICE-BUTLER CO.
ENTERED & FILED

202 DEC 20 A

DeBower v. United Electric

Filed on behalf of:

Craig W. DeBower,
Plaintiff

Counsel of Record
for this party:

John W. Murtagh, Jr., Esq.
Pa. Id. No. 16726

110 Swinderman Road
Wexford, PA 15090

(724) 935-7555
(724) 935-7099 telecopier

(R)

1622
9/15/00
cert. sub.

IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,)
Plaintiff,)
v) Civil Action No.
UNITED ELECTRIC COOPERATIVE, INC.)
and STEPHEN A. MARSHALL)
Defendants.) JURY TRIAL DEMANDED

N O T I C E

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

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

THE LAWYER REFERRAL SERVICE
c/o Prothonotary
P. O. Box 1208, South Main Street
Butler, PA 16001
(412) 284-5214

IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,)
Plaintiff,)
v) Civil Action No.
UNITED ELECTRIC COOPERATIVE, INC.)
and STEPHEN A. MARSHALL)
Defendants.) JURY TRIAL DEMANDED

COMPLAINT IN CIVIL ACTION

COMES NOW the Plaintiff, Craig W. DeBower, by his attorney, John W. Murtagh, Jr., and files this, his Complaint in Civil Action, of which the following is a statement:

1. The Plaintiff, Craig W. DeBower, is an adult citizen of the Commonwealth of Pennsylvania residing at 522 Grandshire Drive, Cranberry Township, Butler County, Pennsylvania 16066 and venue is therefore appropriate in Butler County under applicable law.
2. The Defendant, United Electric Cooperative, Inc., a non-profit electric distribution cooperative, may be found at P. O Box 688, Interstate 80 and Route 255, DuBois, Clearfield County, Pennsylvania 15801.
3. The Defendant, Stephen A. Marshall, an adult resident of the Commonwealth of Pennsylvania, may be found at R. D. 1, Luthersburg, Clearfield County, Pennsylvania 15848.

4. At all times relevant hereto, the Plaintiff, Craig W. DeBower, was contractually employed as the President and Chief Executive Officer of the Defendant, United Electric Cooperative, Inc., under a contract of employment dated November 16, 1993, a true and correct copy of which is attached hereto as Exhibit A, as revised and carried forward by a further agreement dated October 29, 2001, a true and correct copy of which is attached hereto as Exhibit B.

5. At all times relevant hereto, United Electric Cooperative, Inc., maintained its principal office at P. O. Box 688, Interstate 80 and Route 255, DuBois, Clearfield County, Pennsylvania 15801.

6. At all times relevant hereto, Defendant Stephen A. Marshall was a Director of Defendant United Electric Cooperative, Inc., to wit, serving as its Chairman of the Board, and acted in that capacity as hereinafter complained of.

7. At all times relevant to this Complaint, the Defendants, and each of them, in breach of the aforesaid contract of employment removed the Plaintiff from his employment without cause and determined and decided not to pay the Plaintiff all sums due him under his contract of employment.

COUNT I – BREACH OF CONTRACT

Craig W. DeBower
v.
United Electric Cooperative, Inc.

8. The Plaintiff respectfully incorporates all of the allegations of Paragraphs 1 - 7, inclusive, set forth above as if the same were fully set forth herein, and makes the same a constituent part hereof.

9. The Plaintiff's contract of employment, by its express terms, was in full force and effect through and including October 31, 2003 (Exhibit B, p. 1, ¶3), and provided for base annual compensation of \$109,000 (id. at ¶4).

10. The said contract provided for payment of six (6) months' salary and other benefits if Defendant United Electric Cooperative, Inc., terminated Plaintiff's employment "without cause" (id. at p. 2, ¶7(c), together with other, additional cash and non-cash benefits, including but not limited to medical and prescription drug benefits, as set forth in the said contract (id. at p. 4, ¶16).

11. The Defendant, United Electric Cooperative, Inc. falsely, maliciously, wilfully and intentionally represented and claimed in a termination letter dated October 16, 2002 (attached hereto as Exhibit C) that Plaintiff was terminated "for cause", defined in the employment contract as "willful dishonesty, gross misconduct and insubordination only" (Exhibit B at p. 2, ¶7(b).

12. The Plaintiff acted at all times while employed by the Defendant United Electric Cooperative, Inc. in an honest and professional manner, without misconduct and/or insubordination, and fully, effectively and competently discharged his obligations and duties.

13. The act of the Defendant, United Electric Cooperative, Inc. in terminating the Plaintiff's employment was willful, intentional, deliberate and in bad faith, and was calculated, designed and carried out to avoid paying the Plaintiff the salary and other benefits due him under the aforesaid employment contract, and in flagrant breach of the same.

14. As a result of Defendant United Electric Cooperative's unconscionable and

illegal acts as aforesaid, Plaintiff has suffered great and grave financial harm, economic distress and emotional upset.

15. A TRIAL BY JURY IS DEMANDED.

WHEREFORE, Plaintiff Craig W. DeBower demands judgment on this FIRST COUNT, in his favor and against the Defendant United Electric Cooperative, Inc. in an amount in excess of Twenty Five Thousand Dollars (\$25,000) together with costs, attorneys' fees and interest thereon.

**COUNT II
PENNSYLVANIA WAGE PAYMENT AND COLLECTION LAW**

**Craig W. DeBower
v.
United Electric Cooperative, Inc. and Stephen A. Marshall**

16. The Plaintiff respectfully incorporates all of the allegations of Paragraphs 1 - 7 and 9 - 15, inclusive, set forth above as if the same were fully set forth herein, and makes the same a constituent part hereof.

17. Pursuant to the provisions of the Pennsylvania Wage Payment and Collection Law, 43 P.S. §260.1 et seq, the Defendants, United Electric Cooperative, Inc. and Stephen A. Marshall, are each jointly and severally liable to the Plaintiff for the said salary and benefits due under Plaintiff's contract together with liquidated damages and attorneys fees, and interest thereon as provided by law, by virtue of the said employment contract, Defendant Marshall's liability being personal and separate as a director in actual day to day control of the corporate Defendant's actions and failures to act.

18. Defendants, United Electric Cooperative and Inc., and Stephen A.

Marshal, and each of them, have failed to pay the sums due and owing to the Plaintiff despite demand therefor.

19. A JURY TRIAL IS DEMANDED.

WHEREFORE, Plaintiff Craig W. DeBower demands judgment in his favor and against the Defendants United Electric Cooperative, Inc. and Stephen A. Marshall, and each of them on the Second Count, in an amount in excess of Twenty Five Thousand Dollars (\$25,000) together with liquidated damages, attorneys' fees and costs, and interest thereon, as provided by law.

COUNT III - INJURIOUS FALSEHOOD

Craig W. DeBower
v.
Stephen A. Marshall

20. The Plaintiff respectfully incorporates all of the allegations of Paragraphs 1 - 7, 9 - 15, and 17 - 19, inclusive, set forth above as if the same were fully set forth herein, and makes the same a constituent part hereof.

21. The Defendant Stephen A. Marshall, motivated by ill will toward the Plaintiff, and intending to interfere with the Plaintiff's continued employment with the Defendant, United Electric Cooperative, Inc., made a statement or statements of alleged fact or opinion which he knew and or should have known were likely to result in substantial harm to the financial interest of the Plaintiff because of the reliance of the Defendant United Electric Cooperative, Inc. on the said statements, all the while knowing the said statements to be untrue, false, and injurious to the Plaintiff.

22. The Defendant Stephen A. Marshall made such injuriously false and

disparaging statements on September 23, 2002 at a Board Meeting chaired by the Defendant, Stephen A. Marshall, in a letter dated October 16, 2002 (Exhibit C) which was copied to all Board Members and otherwise disseminated to third parties, and, upon belief stated in good faith, at diverse other times as well.

23. As a result of the Defendant Stephen A. Marshall's tortious conduct, Plaintiff was harmed as aforesaid.

24. A JURY TRIAL IS DEMANDED.

WHEREFORE, Plaintiff Craig W. DeBower demands judgment on this Count Three against the Defendant Stephen A. Marshall personally in an amount in excess of Twenty Five Thousand Dollars (\$25,000) together with costs of suit, attorneys' fees and interest thereon.

COUNT IV - INTENTIONAL INTERFERENCE

Craig W. DeBower
v.
Stephen A. Marshall

25. The Plaintiff respectfully incorporates all of the allegations of Paragraphs 1 - 7, 9 - 15, 17 - 19, and 21-24 inclusive, set forth above as if the same were fully set forth herein, and makes the same a constituent part hereof.

26. Defendant Stephan A. Marshall, by the acts and statements set forth above, intentionally induced the Defendant United Electric Cooperative, Inc. not to perform, honor, carry out or otherwise act appropriately under its contract of employment with the Plaintiff.

27. Defendant Stephen A. Marshall was either not privileged to cause and

induce such conduct on the part of the Defendant United Electric Cooperative, Inc. or otherwise abused any such privilege under the circumstances then existing, the Defendant Stephen A. Marshall's actions having constituted defamation, misrepresentation and/or injurious falsehood.

28. Defendant Stephen A. Marshall's misconduct caused grave harm and injury to the Plaintiff as aforesaid.

29. A JURY TRIAL IS DEMANDED.

WHEREFORE, Plaintiff Craig W. DeBower demands judgment on this Count Four against the Defendant Stephen A. Marshall personally in an amount in excess of Twenty Five Thousand Dollars (\$25,000) together with costs of suit, attorneys' fees and interest thereon.

Respectfully submitted,


John W. Murtagh, Jr., Esquire
Pa. Id. No. 16726
Murtagh & Cahill
110 Swinderman Road
Wexford, PA 15090
(724) 935-7555
(724) 935-7099 telecopier

A

A



UNITED ELECTRIC COOPERATIVE, INC.

P.O. Box 688 • DuBois, PA 15801
Phone: (814) 371-8570 • TOLL FREE 1-800-262-8959
FAX: (814) 371-9278

Edward B. Hoffman, President
Jack Goodman,
Interim General Manager

November 16, 1993

Mr. Craig W. DeBower
1221 Stinson Avenue
Mattoon, Illinois 61938

On behalf of the Board of Directors of United Electric Cooperative, Inc., I am authorized to make you an offer of employment as General Manager at an annual salary of \$70,000. You will also be entitled to life insurance, major medical insurance, long-term disability insurance, participation in the retirement security program and such other benefit programs as currently being furnished to staff personnel of United Electric Cooperative, Inc.

In addition to the foregoing, the Board of Directors authorize:

1. Reimbursement for travel and out-of-pocket expense including temporary lodging of not more than 30 days and expense for one-house hunting trip from your residence to DuBois, Pennsylvania, and return.
2. Reimbursement for the movement of household effects from Mattoon, Illinois, to DuBois, Pennsylvania, or the vicinity thereof. The reimbursement will be based upon the lower of two or more estimates secured by Mr. DeBower.
3. United Electric Cooperative, Inc., will provide a vehicle for business and personal use. United Electric Cooperative, Inc., will not be responsible for any tax obligation or liability that the Internal Revenue Service may impose on Mr. DeBower by reason that the vehicle is or may be used for personal use.
4. In recognition of prior years' service, annual leave will be based on twenty-five years of service as of the date of full-time service with United Electric Cooperative.

PLAINTIFF'S
EXHIBIT

A

Mr. DeBower
November 16, 1993
Page 2

UNITED ELECTRIC COOPERATIVE, INC.

5. It is understood that within the first year of employment you will be granted two weeks of vacation. A portion of this vacation will be used during the 1993 Christmas season and a week of vacation will be used during the seven-day period beginning February 20, 1994.

This offer of employment is made upon the condition you will report for work and assume the duties of General Manager on or about December 13, 1993.

For the Board of Directors:

Edward B. Hoffman
Edward B. Hoffman, President November 16, 1993

I accept the offer of employment and the conditions related thereto as set forth above.

Craig W. DeBower
Craig W. DeBower November 17, 1993

B

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October 29, 2001

Mr. Craig W. DeBower, President & CEO
United Electric Cooperative, Inc.
P O Box 688
DuBois, PA 15801

RE: Employment Agreement

This letter confirms the terms and conditions of your employment with United Electric Cooperative, Inc. (Company) as approved by the Board of Directors as President and CEO. Please indicate your acceptance of these terms by signing a copy of this letter and returning it to me.

1. **Employment.** Your title will be President and Chief Executive Officer (CEO). You will report to the Board of Directors.
2. **Duties.** During the term of this Agreement, and excluding any periods of vacation, sick, disability, or other paid or unpaid time-off to which the President and CEO is entitled, you agree to devote reasonable attention and time during normal business hours to the business and affairs of Company and, to the extent necessary discharge the responsibilities assigned to President and CEO under Company's Bylaws and Policies, as amended from time to time, to use President and CEO's reasonable best efforts to perform faithfully and efficiently such responsibilities to the business of the Company and its affiliates.
3. **Term.** Subject to the termination options in paragraphs 7 and 8, this Agreement as President and CEO will begin November 1, 2001 and continue until October 31, 2003, unless extended in accordance with the following. Your employment will extend further automatically from year to year, unless you have received from the Board written notice, dated and mailed at least ninety (90) days prior to your anniversary date of appointment, that the term of your employment will not be extended. The only exception to the aforementioned term is if you would elect to exercise the Early Out Program option per paragraph 16.
4. **Compensation.** Company shall pay you a Base Salary at an annual rate of One-Hundred Nine Thousand and One Hundred Dollars (\$109,100.00) or such higher annual rate as may from time to time to be approved by the Board, such Base Salary to be paid in substantially equal regular periodic payments in accordance with Company's regular payroll practices. Base salary shall be reviewed at least annually in October each year. In addition, the Board of Directors may increase your base salary and/or pay you a lump sum merit/bonus payment due to inflation, work responsibilities, substantial change in Company's size and/or complexity, and the Company's, or its affiliates, financial position.

PLAINTIFF'S
EXHIBIT

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5. **Benefits.** You are eligible for those benefits provided to other salaried employees.
6. **Vehicle Allowance.** During the term of your employment you shall receive a monthly car allowance in the amount of \$520.00 with the company providing gas for company use. The Company will not be responsible for any tax obligation or liability that the Internal Revenue Service may impose by reason that the vehicle is or may be used for personal use.
7. **Company Termination.** (a) **General.** Your employment will be at-will, and the Company may terminate your employment immediately at any time upon written notice for any reason. You agree to resign immediately from all official positions with the Company upon termination of your employment for any reason.
(b) **For Cause.** If your employment is terminated by the Company for cause, the Company's obligation under this agreement will terminate immediately upon payment of any salary and benefits earned but unpaid and for which the Company is obligated. For cause means willful dishonesty, gross misconduct and insubordination only.
(c) **Without Cause.** If your employment is terminated by the Company without cause, as your exclusive remedy, you shall continue to receive your current base salary payable in the usual way for six (6) months (the "Salary Continuation Period"). You will also continue to receive the same level of medical/dental benefits, life insurance, 401K benefits and Defined Contribution benefits as is available to you at the time of your termination, at the Company's expense for the duration of the Salary Continuation Period. The Company's obligation to make payments during the Salary Continuation Period is contingent upon you first signing a separation agreement and release. At the conclusion of the Salary Continuation Period you would be eligible to participate in the Early Out Program defined in paragraph 16.
8. **Employee Termination.** You agree to give the Company sixty (60) days written notice of the termination of your employment with the Company. Provided that you work for the Company the sixty (60) day period, the Company will pay you the sum of \$3,000.00, less deductions required by law, as a stay bonus. This payment will be in addition to your salary for the sixty (60) days of continued employment. You will be ineligible for the stay bonus if you leave employment with less than sixty (60) days written notice.
9. **Disability.** If, during the term of this Agreement, you become ill or otherwise incapacitated and the Company determines, in good faith, that such illness or other incapacity renders you incapable of performing your duties and obligations under this Agreement, even with reasonable accommodations made by the Company on your behalf, the Company shall have the right to terminate your employment and this Agreement, in which event you shall be entitled to (i) your current benefits and base salary payable in the usual way for a period of six months; (ii) any benefits otherwise available to employees terminating employment with the Company, which include any unused sick time and vacation; (iii) at the conclusion of the six month period you would be eligible to participate in the Early Out Program defined in paragraph 16.

10. **Non-Disclosure.** You agree not to disclose to anyone outside of the Company, use in other than the Company's business, nor disclose to anyone within the Company who does not have a need-to-know, any technical or non-technical information or material which gives the Company an advantage over others who do not know it ("proprietary information") relating in any way to the business of the Company, except with the Company's written permission. You shall not disclose to the Company nor induce the Company to use any proprietary information of others.
11. **Proprietary Information.** You agree not to disclose any Proprietary Information to anyone outside the Company or use in other than the Company's business. For purposes of this Agreement, proprietary information shall include, but not be limited to, scientific or any technical information, research, development, design, process, manufacture, procedure, formula, testing, improvements, operation and information related to the sale of products or services; the Company's patent position or trade secrets; costs, profits, investments, planning, markets and other financial or business information including listings of names, addresses or telephone numbers; or experience with new ventures or products. Proprietary information may be in written, digital, visual or oral form.
12. **Return Of Property And Documents.** Upon your separation from employment for any reason, you immediately shall return to the Company all keys, credit cards, company identification and documents and information concerning the Company or acquired by you in the course and scope of your employment.
13. **Litigation And Regulatory Cooperation.** During and after your employment, notwithstanding the cause of separation from employment, you shall cooperate fully with the Company in the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of the Company which relate to events or occurrences that transpired while you were employed by the Company. Your full cooperation in connection with such claims or actions shall include, but not be limited to, being available to meet with counsel to prepare for discovery or trial and to act as a witness on behalf of the Company. During and after your employment, you also shall cooperate fully with the Company in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired while you were employed by the Company. After your employment, if you are requested to perform any services, the Company will reimburse you at the hourly rate of \$50.00 per hour. The Company shall reimburse you for any reasonable out-of-pocket expenses incurred in connection with your performance of obligations pursuant to this Section.
14. **Tax Withholding.** You understand and acknowledge that any amount payable may be subject to appropriate tax withholding and you hold the Company harmless for deducting such amounts prior to payment.
15. **Modification.** If all or part of any provision of this Agreement shall become or be declared unlawful or unenforceable by reason of any rule of law or public policy, the rights of the Company and your obligations under this Agreement shall be modified only as much as is necessary to make the Agreement enforceable and all other portions of this Agreement, including the remaining portion of any provision, shall remain in full force and effect.

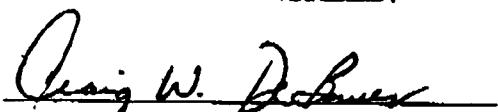
16. **Early Out Program.** In the event your employment is terminated by the Company without cause as provided in paragraph 7., or, you become disabled as provided in paragraph 9., you shall be entitled to receive the additional cash and non-cash benefits set forth hereinafter. The additional cash benefit would equal your weekly base salary, less applicable withholding and taxes, for that number of weeks equal to two times your years of electric cooperative service with the Company payable either weekly or in a lump sum. The additional noncash benefit would be employer paid coverage as currently being provided for you and your spouse under any medical and prescription drug plan sponsored by the Cooperative for its employees until you attain age 62. When you reach age 62 you will be given the option of continuing to receive coverage under the Cooperative sponsored medical and prescription drug plan on an "80/20" basis until age 65. In addition to the additional cash and noncash benefits described wherein, you would also be eligible for any and all benefits otherwise available to employees terminating employment with the Cooperative. These would include benefits under the NRECA Retirement and Security Program, the SelectRE Pension Plan (401 k Plan) and your unused sick time repurchased at 35% of its cash value and payment for any unused vacation days both payable weekly or in a lump sum. The Early Out Program could also be available to you under other circumstances upon the mutual agreement of both parties.
17. **Applicable Law.** Our agreement outlined in this letter will be governed by, and construed and enforced in accordance with, the laws of the jurisdiction of your principal place of employment.
18. **Entire Agreement.** This letter contains the entire agreement between us with respect to the subject matter hereof and supersedes all prior agreements or understandings with respect thereto. The terms of this letter may be amended only by an agreement in writing signed by you and the Company.

Sincerely yours,



Stephen A. Marshall, Chairman of the Board
Board of Directors, United Electric Cooperative, Inc.

ACCEPTED AND AGREED:



Craig W. DeBower, President & CEO

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c

C



United Electric

COOPERATIVE, INC.
People You Can Count On

October 16, 2002

Craig W. DeBower
522 Grandshire Drive
Cranberry Township, PA 16066

Re: Employment with United Electric Cooperative, Inc.

Dear Craig:

In early to mid-September, 2002, the Board of Directors of United Electric Cooperative, Inc. ("Board") became aware of several troubling matters concerning your employment relationship with the Cooperative. Among other things, the Board concluded that you had misrepresented facts concerning employee evaluations. Specifically, you were asked about employee evaluations and you insisted that every employee received at least an annual evaluation. The Board has since learned that evaluations were not done on every employee. At about that same time, the Board also discovered that you had sold your home in DuBois and had moved your residence to Cranberry Township, Butler County, some 2½ hours driving time from the Cooperative. This move is in direct violation of your position profile and it significantly compromises your leadership.

On September 23, 2002, the Board met with you to discuss these and other related matters. During that meeting, you were instructed to move back towards DuBois, to any location within the Cooperative's service territory. You refused this directive in an insulting manner. At the conclusion of that meeting, you were placed on paid leave status.

The Board has thoroughly reviewed your actions and has decided that it has no choice but to terminate your employment relationship with the Cooperative, for cause, effective immediately. As President and CEO of our operation, we expected you to be honest and forthright in all of your dealings with us. We have to be able to trust the individual leading our organization at all times. Your misrepresentations concerning, among other things, employee evaluations are intolerable and rise to the level of willful dishonesty with the meaning of Article 7(b) of your employment agreement.

In addition, your adamant refusal to return your residence to somewhere within our service area amounts to insubordination, again within the meaning of Article 7(b) of your agreement. Both your job description and industrial common sense require you to "reside within close proximity" to the Cooperative. Your refusal to do so is inexcusable and provides an independent basis for your cause termination.

Clearfield

C

I 80 + Rt 255

P.O. Box 688 • DuBois, PA 15801

Phone: 814 371-8570 • Fax: 814 371-9278

PLAINTIFF'S
EXHIBIT

C

Your check for your accrued, but unused benefits, including your vacation pay, is enclosed. Your Cooperative paid insurance benefits will cease as of October 31, 2002. Thereafter, you will be eligible to continue your coverages, at your expense, under our group plan. Information concerning your right to convert your coverages will be sent to you shortly.

While we regret having to take this action, your conduct left us with no alternative.

Very truly yours,

UNITED ELECTRIC COOPERATIVE, INC.

By SAM HORN
Chairman, Board of Directors

cc: Board of Directors

VERIFICATION

I verify that the statements made in the foregoing pleading, 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.

Date: 12-17-02

Craig W. DeBower
Craig W. DeBower

IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,
Plaintiff

v.

UNITED ELECTRIC COOPERATIVE,
INC. and STEPHEN A. MARSHALL,
Defendants

Civil Action No. AD 02 - 11333

PROTHONOTARY
OFFICE-BUTLER CO.
ENTERED & FILED

2003 JAN 24 A 10:10

Lenny M. Weis
Type of Pleading: DEFENDANTS' BRIEF
IN SUPPORT OF PRELIMINARY
OBJECTIONS

Filed on Behalf of Defendants

Counsel of Record for this Party:

Craig A. Markham, Esquire
Supreme Court I.D. 38531
Gery T. Nietupski, Esquire
Supreme Court I.D. 41488
Elderkin, Martin, Kelly & Messina
150 East Eighth Street
Erie, Pennsylvania 16501
(814) 456-4000

IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,)
Plaintiff)
)
v.) Civil Action No. AD 02 - 11333
)
UNITED ELECTRIC COOPERATIVE,)
INC. and STEPHEN A. MARSHALL,)
Defendants) JURY TRIAL DEMANDED

DEFENDANTS' BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS

I. **BACKGROUND**

A. Procedural History

This case is presently before the Court upon the preliminary objections of the Defendants. The Defendants have asserted that venue does not properly lie within Butler County and they have asserted a demurrer to Plaintiff's contract claim to the extent it seeks an award of damages for emotional distress, a demurrer to Plaintiff's cause of action in defamation and a demurrer to Plaintiff's cause of action for interference with contractual relations.

B. Background

Effective October 16, 2002, the Plaintiff was fired from his position as the president and CEO of Defendant, United Electric Cooperative, Inc. ("United Electric"). This action was taken by the board of directors of United Electric in response to the Plaintiff's willful dishonesty and insubordination. Specifically, the board found that the Plaintiff had falsely stated that every employee had received an evaluation on an annual basis when, in fact, it was known to the Plaintiff that this was not true. Additionally, the board learned that the Plaintiff had moved his residence from DuBois, Pennsylvania to a location in Butler County, some two and one-half hours away from company headquarters. The Plaintiff made this move despite the fact that his job description requires that the Plaintiff live in close proximity to the DuBois headquarters. When the board learned of the Plaintiff's relocation, it requested that Plaintiff return his residence to a location in or around DuBois or at least within the service territory of United Electric. The Plaintiff refused this request and did so in an insulting manner. The board then placed the Plaintiff on paid leave status while they considered their options.

The board then decided to terminate Plaintiff's employment. By letter dated October 16, 2002, Defendant, Steven A. Marshall ("Marshall"), the chairman of the United Electric board, wrote to the Plaintiff to inform him of the board's decision and its reasons for terminating the Plaintiff's employment. A copy of the October 16, 2002 letter is attached to the complaint as exhibit "C." Plaintiff's contract of employment requires that termination must be

"upon written notice." *Employment Agreement, ¶7(a)*. Copies of this letter were delivered to the board members.

As confirmed by his contract of employment, Plaintiff was an at-will employee and properly could be terminated for no cause. *Employment Agreement, ¶7(a)*. The contract did, however, provide for additional compensation and benefits if the termination was without cause. *Id. Compare ¶7(b) with ¶¶7(c), 16.*

On or about December 20, 2002, the Plaintiff filed this lawsuit purporting to allege (1) a cause of action in breach of contract against United Electric, (2) a cause of action under the Pennsylvania Wage Payment and Collection Law against United Electric and Marshall, (3) a cause of action in defamation against Marshall and (4) a cause of action of intentional interference with contractual relations against Marshall.

The Defendants have filed preliminary objections on the following grounds:

- A. Venue: Venue does not properly lie in Butler County under Pa.R.C.P. 2179;
- B. Demurrer - Emotional Distress: The Plaintiff cannot recover emotional distress damages under his contract cause of action;
- C. Demurrer – Defamation: The Plaintiff cannot succeed on his defamation claim because the communication at issue is not capable of

defamatory meaning and because Marshall has absolute privilege under the circumstances.

D. Demurrer – Intentional Interference with Contractual Relations: The Plaintiff cannot succeed on his claim against Marshall for intentional interference with contractual relations because Marshall was acting within the scope of his official duties as board chairman.

E. Demurrer – Claim for Attorney's Fees: In Counts I, III and IV Plaintiff demands an award of attorney's fees, but such a claim is prohibited as a matter of law.

The Defendants have also filed the affidavit of Brenda Swartzlander, general manager of United Electric, with regard to the issue of venue.

This brief is respectfully submitted in support of Defendants' preliminary objections.

II. DISCUSSION

A. Venue Does Not Lie in Butler County

Since United Electric is a corporation, venue is determined by reference to Rule 2179, which Rule states that venue is proper "in and only in"

1. The county where the corporation's registered office and principal place of business is located;
2. A county where the corporation regularly conducts business;
3. The county where the cause of action arose; or
4. A county where a transaction or occurrence took place out of which the cause of action arose.

Pa.R.C.P. 2179(a).

Venue does not properly lie in Butler County. The registered office and principal place of business of United Electric is P.O. Box 688, Interstate 80 and Route 255, DuBois, Clearfield County, Pennsylvania 15801. United Electric does not regularly conduct any business in Butler County. See Affidavit of Brenda Swartzlander. The purported causes of action did not arise in Butler County. The Plaintiff worked for United Electric out of its DuBois office. The Plaintiff signed his contract of employment at the DuBois office. The United Electric board of directors were present in the DuBois office when they voted first to suspend and later to terminate the Plaintiff's employment. See Affidavit of Brenda Swartzlander. All relevant activity concerning the Plaintiff's termination occurred in Dubois, Clearfield County. No transaction or occurrence related to this matter took place within Butler County.

Therefore, based upon the foregoing, venue does not properly lie within Butler County and the Plaintiff's complaint must be dismissed.

○ ○

B. Damages for Emotional Distress Cannot be Recovered in the Contract Claim

In Count I of the complaint, entitled "Breach of Contract," the Plaintiff demands recovery for alleged "emotional upset" arising from the termination of his employment.

Complaint, ¶14. It is clear, however, that Pennsylvania law does not allow for an award of emotional distress in a contract action.

Damages "for emotional distress are not ordinarily allowed in actions for breach of contract." Rittenhouse Regency Affiliates v. Passen, 482 A.2d 1042, 1043 (Pa. Super. 1984). This prohibition follows the well-established legal principle that there "can be no recovery for humiliation, disappointment, anxiety, or mental suffering or emotional distress when unconnected with physical injury or physical impact." Gefter v. Rosenthal, 119 A.2d 250, 251 (Pa. 1956). See also Kutner v. Eastern Airlines, Inc., 514 F. Supp. 553, 559 (E.D. Pa. 1981) (to recover emotional harm "under the contract theory, plaintiffs must allege physical injury or physical impact"); Nicholas v. Pennsylvania State Univ., 227 F.3d 133, 147 (3rd Cir. 2000) (under Pennsylvania law, to recover for mental anguish in a breach of contract case, "plaintiffs must allege physical injury or physical impact"). The Plaintiff's complaint fails to allege any physical injury or physical impact. Therefore, his claim for emotional distress must be dismissed.

Although it has not been adopted as the law of Pennsylvania,¹ Section 353 of the Restatement (Second) of Contracts identifies a narrow exception to this general prohibition, but even this exception has no application to our case. Section 353 of the Restatement provides as follows:

§353. Loss Due to Emotional Disturbance.

Recovery for emotional disturbance will be excluded unless the breach also caused bodily harm or the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result.

The limited nature of this exception is made clear by the unique types of contact which fit within this exception. "Common examples are contracts of carriers and inn keepers with passengers and guests, contracts for the carriage or proper disposition of dead bodies, and contracts for the delivery of messages concerning death." Restatement (Second) of Contracts, §353, comment (a). See also Rittenhouse Regency Affiliates, supra, 482 A.2d at 1043, fn.1. In fact, so narrow is this exception that the Defendants have found no reported case considering the question which has found that the facts supported an emotional distress claim.

For instance, in Brooks v. Hickman, 570 F. Supp. 619 (W.D. Pa. 1982), the plaintiff asserted a claim for emotional distress in his contract action against his investment

¹ Mason v. Western Pennsylvania Hospital, 453 A.2d 974, 979-80 (Pa. 1982) Nix, J. concurring and dissenting; Rodgers v. Nationwide Mutual Ins. Co., 496 A.2d 811, 815 (Pa. Super. 1985); Fair v. State Farm, 18 D.&C. 4th 78, 83 (Lancaster 1992).

broker arising from the broker's fraud, mismanagement and misappropriation of funds. The plaintiff's claims for emotional distress were dismissed by the trial court. The court ruled that Pennsylvania law permits recovery for emotional distress only in those instances where the distress is associated with physical impact, where it results from the apprehension of physical impact even though no impact occurs and in limited situations where the plaintiff actually witnesses the personal injury of another. 570 F. Supp. at 619-20.

The court in Brooks also noted, however, that some Pennsylvania courts have acknowledged the *possibility* of a recovery on a contract claim where "the breach is of such a kind that serious emotional disturbance was a particularly likely result." Id. 570 F. Supp. at 620. "However, the scope of such recovery as envisioned by the authors of the Restatement and applied by various courts is quite limited." Id. The court ruled that the loss of money, even when the loss jeopardizes the plaintiff's retirement "is simply not of the same class as the cases" which permit an award of emotional distress damages. "Although loss of money is often disturbing, it does not ordinarily give rise to a claim of emotional distress. We find no Pennsylvania decision permitting recovery of such damages on breach of a contract which caused only a monetary loss, and we hesitate to extend the rule." Id. See also Mason, supra, 453 A.2d at 980 (Justice Nix ruled that a contract claim arising from the wrongful sterilization of the plaintiff is not the type of breach of contract which would support a claim for emotional distress); Rodgers, supra (emotional distress damages are not available even though the breach by the defendant caused the imposition of a lien against the plaintiff's real estate, rendered the plaintiff unable to refinance his home, prevented the plaintiff from consolidating his debts, interfered with

plaintiff's ability to pay his debts when they came due and eventually caused the plaintiff to file for bankruptcy protection).

The Plaintiff's complaint alleges that he was terminated without just cause, and that United Electric breached the employment contract because the Plaintiff has not been paid all of the money which he allegedly is owed. *Complaint, ¶¶7 and 13.* There is no allegation of any bodily injury or physical impact and thus, under the general prohibition, there can be no recovery for emotional distress. Likewise, *even if* the limited exception set forth in Section 353 of the Restatement had been adopted in Pennsylvania, which it has not, the alleged breach of the Plaintiff's employment contract is not the unique type of breach which would support an award of emotional distress.

Based upon the foregoing, the demurrer to the emotional distress claim must be sustained.

C. The Defamation Claim Must Be Dismissed

1. Marshall's Letter is Incapable of Defamatory Meaning

In Count III of the complaint, the Plaintiff purports to assert a cause of action in defamation against Marshall. Plaintiff alleges that Marshall's letter of October 16, 2002, contain injurious falsehoods which caused Plaintiff to lose his job. *Complaint, ¶¶21-22.* In order to

prevail on this claim, the Plaintiff must establish that the communication at issue is defamatory.

“A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.”

Maier v. Maretti, 671 A.2d 701, 704 (Pa. Super. 1996) appeal den. 694 A.2d 622 (Pa. 1997).

However, it is clear also that “communications which may annoy or embarrass the person are not sufficient as a matter of law to create an action in defamation.” Id.

For instance, in Maier, the plaintiff was fired after her supervisor reported to the branch manager that the plaintiff had made threatening remarks to the supervisor and had used profanity while doing so. The manager concluded that these remarks constituted gross insubordination and harassment. As a result, the plaintiff was fired. Id. 671 A.2d at 703. The plaintiff denied that she made the remarks and asserted that the supervisor had intentionally lied to the manager. The plaintiff then filed suit against the supervisor alleging defamation and interference with her employment contract. The defamation claim was premised on the fact that the supervisor’s statement placed the plaintiff in a false light and implied that plaintiff was vulgar, crude and grossly insubordinate. Id. 671 A.2d at 704. The trial court dismissed the defamation claim after concluding that, as a matter of law, the supervisor’s statements to the branch manager, even if false, were not capable of a defamatory meaning. Id.

On appeal, this ruling in Maier was upheld. Although the supervisor’s statements to the manager “clearly embarrassed the appellant, [] it in no way lowered the community’s estimation of the appellant.” Id. 671 A.2d at 704. The court ruled that even if the supervisor had

falsely accused the plaintiff, the statements attributed to plaintiff were not capable of defamatory meaning. “[A]lleging someone is crude, vulgar and insubordinate is not as offensive as other statements which have been characterized [by the courts] as incapable of defamatory meaning.” Id. Such examples of other statements, which the courts have held, as a matter of law, to be incapable of a defamatory meaning include the following:

1. Statement that the plaintiff was fired due to misconduct, Goralski v. Pizzimenti, 540 A.2d 595 (Pa. Cmwlth. 1988);
2. Statement that employer lacked trust in the plaintiff and that the plaintiff’s work performance has created an unstable working environment, Cashdollar v. Mercy Hospital of Pittsburgh, 595 A.2d 70 (Pa. Super. 1991);
3. Statement that the employer lacked confidence in the plaintiff’s work performance and lacked trust in the plaintiff, Gordon v. Lancaster Osteopathic Hospital Association, 489 A.2d 1364 (Pa. Super. 1985);
4. Statements that the plaintiff had willfully disregarded the employer’s instructions, that the plaintiff had failed to follow proper work procedures and that plaintiff was not able to adequately perform his job, Wendler v. DePaul, 499 A.2d 1101 (Pa. Super. 1985);
5. Statement that plaintiff was unfit for her job, Constantino v. The University of Pittsburgh, 766 A.2d 1265, 1270 (Pa. Super. 2001);
6. Statement that the plaintiff was anti-Semitic, Rybas v. Wapner, 457 A.2d 108 (Pa. Super. 1983);

7. Statement that the employee was crazy, Kryeski v. Schott Glass Technologies, 626 A.2d 595 (Pa. Super. 1993) alloc. denied 639 A.2d 29 (Pa. 1994).

The letter here at issue, signed by Marshall and sent to the Plaintiff, stated that the Plaintiff was fired because he had "misrepresented facts concerning employee evaluations" and that he had been insubordinate because he refused, in an insulting manner, to abide by the board's request to relocate his residence. These statements clearly are no worse than the foregoing examples. Although these statements may be embarrassing, they are not capable of defamatory meaning. As such, Defendants' demurrer must be sustained.

2. Marshall Enjoys Absolute Privilege to the Defamation Claim

Alternatively, Count III of the complaint must be dismissed because, as a matter of law, Marshall's letter to the Plaintiff is a privileged communication and, thus, it cannot form the basis of a defamation action.

It is well settled that an "employer has an absolute privilege to publish defamatory matters in notices of employee terminations." Sobel v. Wingard, 531 A.2d 520, 522 (Pa. Super. 1987). "One who enjoys absolute privilege is immune from liability even though he publishes the defamatory material from an improper motive, with actual malice and without reasonable and probable cause." Sciandra v. Lynett, 187 A.2d 586, 599 (Pa. 1963). "Employers thus have a right of absolute privilege to issue warning letters, notices of a termination, etc. with impunity

under Pennsylvania law." Momah v. Albert Einstein Medical Center, 978 F. Supp. 621, 635 (E.D. Pa. 1997) aff'd 229 F.3d 1138 (3rd Cir. 2000).

This privilege gives the employer the latitude which is necessary to explain the basis of the termination. "The purpose of the absolute privilege is to encourage the employer's communication to the employee of the reasons for discharge by eliminating the risk that the employer will possibly be subject to liability for defamation." Miketic v. Baron, 675 A.2d 324, 328 (Pa. Super. 1996). The privilege applies even though the termination notice also is distributed to management personnel. Momah, supra, 978 F. Supp. at 634 (the privilege applies even though communication is published to "relevant supervisory personnel"). Sobel, supra, 531 A.2d at 522 (privilege applies even though the notice was sent to "limited supervisory personnel").²

The letter signed by Marshall, terminating the Plaintiff's employment, was addressed to the Plaintiff with copies being sent to board members. As the letter states, the board members had already "thoroughly reviewed" the allegations against the Plaintiff and the board then voted to terminate his employment. Therefore, the board members were well aware of the allegations set forth in the letter. The fact that the letter was then sent to the board members does not undermine the application of the absolute privilege. Therefore, Defendants' demurrer to Count III of the complaint must be sustained.

² When the employer publishes defamatory material, but does not send it to the employee, a conditional privilege may apply. Miketic, supra, 675 A.2d at 329. Since Marshall's letter was sent to Plaintiff, absolute privilege applies.

○ ○

D. Claim for Tortious Interference with Contractual Relations Must Be Dismissed

In Count IV of the complaint, the Plaintiff purports to assert against Marshall a cause of action for tortious interference with contractual relations. Specifically, it is alleged that Marshall's statements to his fellow board members, as set forth in his October 16, 2002 letter, caused the board to vote in favor of terminating the Plaintiff's contract of employment.

To assert a cause of action for intentional interference with contractual relations, the Plaintiff must allege that the Defendant improperly interfered with the Plaintiff's contract with "a third person." Restatement (Second) of Contracts, §766. "Essential to recovery on the theory of tortious interference with contract is the existence of three parties; a tortfeasor who intentionally interferences with a contract between the plaintiff and a third person." Maier, supra, 671 A.2d at 707. In the employment context, the law considers the employer's agent to be the same as the employer and, thus, there is no third party when the agent participates in the termination of the employment contract. A "corporation acts only through its agents and officers, and such agents or officers cannot be regarded as third parties when they are acting in their official capacity." Id. As such, no cause of action for intentional interference with contractual relations can be asserted against the agent of the employer with regard to the termination of the Plaintiff's employment contract.

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For instance, in Rutherford, supra, the plaintiff sued the employer's vice president alleging that the vice president had participated in the termination of the contract of employment in such a way as to constitute tortious interference. The trial court dismissed this cause of action and the Superior Court affirmed. The Superior Court ruled that "this cause of action requires three separate parties; parties to a contract or employment relationship cannot assert this cause of action against each other." Id. 612 A.2d at 507-08.

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Accordingly, Pennsylvania law is clear that where, as here, a claim for intentional interference is based upon an alleged "contract" or business relationship with an employer, and that relationship is terminated by an agent of the employer acting within the scope of his agency, there is no third party involved and no claim will lie.

Id. 612 A.2d at 508. See also Maier, supra, 671 A.2d at 707 (a claim for tortious interference cannot be asserted against employer's agent); Adams v. US Air, Inc., 652 A.2d 329, 330 (Pa. Super. 1994) ("it is well established that managerial employees acting within the scope of their employment are not third parties for purposes of satisfying the elements required to maintain an action for interference with contractual relations"); Daniel Adams Associates, Inc. v. Rimbach Publishing, 519 A.2d 997, 1002 (Pa. Super. 1987) (where "plaintiff has entered into a contract with a corporation, and that contract is terminated by a corporate agent who has acted within the scope of his or her authority, the corporation and its agent are considered one so that there is no third party against whom a claim for contractual interference will lie").

The complaint confirms that Marshall was, at all times relevant, acting in his capacity as a director of United Electric. *Complaint, ¶6.* It was in this capacity that Marshall participated in the board's decision to terminate the Plaintiff's employment contract. As such, no cause of action for intentional interference will lie against Marshall and the demurrer to Count IV must be sustained.

E. Plaintiff's Claims for Attorney's Fees Must be Dismissed

In Counts I, III and IV of the complaint, in the "Wherefore" paragraphs, the Plaintiff demands an award of attorney's fees. Under Pennsylvania law, attorney's fees cannot be awarded in connection with any of the claims asserted in these counts of the complaint. "Over and over again we have decided there can be no recovery for counsel fees from the adverse party to a cause, and the absence of express statutory allowance of the same . . . or clear agreement by the parties . . . or some other established exception." Corace v. Balint, 210 A.2d 882, 887 (Pa. 1965); See also Chatham Communications, Inc. v. General Press Corp., 344 A.2d 837, 842 (Pa. 1975); ABL Liquidating Co. v. McCabe, 62 D.&C.2d 29, 34 (Bucks Co. 1973).

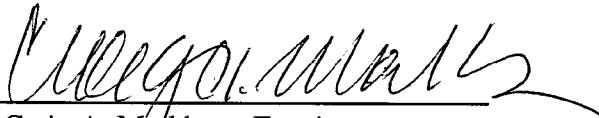
There is no express statutory allowance nor any provision in the employment contract nor any other established exception which would permit Plaintiff to recover attorney's fees on the claims asserted. Accordingly, the demurrer should be sustained with regard to Plaintiff's claims for attorney's fees.

III. CONCLUSION

The Defendants respectfully request that this Honorable Court enter an order dismissing the complaint for lack of venue. In the alternative, the Defendants respectfully request that this Honorable Court sustain the demurrer to the emotional distress claim asserted in Count I of the complaint (Breach of Contract), sustain the demurrer to Count III of the complaint (Defamation) in its entirety, sustain the demurrer as to Count IV of the complaint (Interference with Contractual Relations) in its entirety, and sustain the Plaintiff's claim for an award of attorney's fees in Counts I, III and IV.

Respectfully submitted,

ELDERKIN, MARTIN, KELLY & MESSINA


By 
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~~James E. Kelly~~
PROTHONOTARY

IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,
Plaintiff

v.

Civil Action No. AD 02 - 11333

UNITED ELECTRIC COOPERATIVE,
INC. and STEPHEN A. MARSHALL,
Defendants

Type of Pleading: DEFENDANTS'
PRELIMINARY OBJECTIONS

Filed on Behalf of Defendants

Counsel of Record for this Party:

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IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,)
Plaintiff)
)
v.) Civil Action No. AD 02 - 11333
)
UNITED ELECTRIC COOPERATIVE,)
INC. and STEPHEN A. MARSHALL,)
Defendants) JURY TRIAL DEMANDED

DEFENDANTS' PRELIMINARY OBJECTIONS

AND NOW, the Defendants, by and through their attorneys, ELDERKIN, MARTIN, KELLY & MESSINA, file the following Preliminary Objections, respectfully representing as follows:

1. This lawsuit arises from the termination of the Plaintiff's employment with Defendant, United Electric Cooperative, Inc. Plaintiff's complaint purports to assert four causes of action arising from his termination: Count I, breach of contract; Count II, violation of Pennsylvania Wage Payment and Collection Law; Count III, defamation; Count IV, intentional interference with contractual relations.

2. The Defendants assert the following by way of preliminary objections:

- a. Venue: Venue does not properly lie in Butler County under Pa.R.C.P. 2179;
- b. Demurrer – Emotional distress: Plaintiff cannot recover emotional distress damages under his contract cause of action;
- c. Demurrer – Defamation: Plaintiff cannot succeed on his defamation claim because the communication at issue is not capable of defamatory meaning and because the Defendant has absolute privilege under the circumstances;
- d. Demurrer – Intentional interference with contractual relations: Plaintiff cannot succeed on his claim against Defendant, Marshall, for intentional interference with contractual relations because the Defendant was acting within the scope of his official duties as board chairman;
- e. Demurrer – Claim for attorney's fees in Counts I, III and IV: Plaintiff demands an award of attorney's fees but such a claim is prohibited as a matter of law.

3. The Defendants have filed the affidavit of Brenda Swartzlander, general manager of United Electric, in regard to the issue of venue. The Defendants have also filed a brief in support of their preliminary objections, which brief is hereby incorporated by reference as if set forth fully herein.

I. IMPROPER VENUE

4. Under Pa.R.C.P. 2179(a), venue does not properly lie in Butler County. The registered office and principal place of business of United Electric is P.O. Box 688, Interstate 80 and Route 255, DuBois, Clearfield County, Pennsylvania 15801. United Electric does not regularly conduct any business in Butler County. See Affidavit of Brenda Swartzlander. The purported causes of action did not arise in Butler County. The Plaintiff worked for United Electric out of its DuBois office. The Plaintiff signed his contract of employment at the DuBois office. The United Electric board of directors were present in the DuBois office when they voted first to suspend and later to terminate the Plaintiff's employment. See Affidavit of Brenda Swartzlander. All relevant activity concerning the Plaintiff's termination occurred in Dubois, Clearfield County. No transaction or occurrence related to this matter took place within Butler County.

5. Therefore, based upon the foregoing, venue does not properly lie within Butler County and the Plaintiff's complaint must be dismissed.

II. DEMURRER – EMOTIONAL DISTRESS CLAIM

6. In his contract claim, the Plaintiff has asserted a demand for recovery of emotional distress damages.

7. Under the law of Pennsylvania, damages for alleged emotional distress cannot be awarded in a contract action.

8. Based upon the foregoing, Defendants assert a demurrer to this damage claim.

III. DEMURRER – DEFAMATION

9. In Count III of the complaint the Plaintiff asserts that Defendant, Marshall, published defamatory statements in a letter dated October 16, 2002 issued to the United Electric Board of Directors. A copy of the October 16, 2002 letter is attached to the complaint as exhibit "C."

10. The statements set forth in the letter issued by Defendant, Marshall, are not capable of defamatory meaning.

11. Additionally, Defendant, Marshall, enjoys absolute privilege with regard to the publication of this letter. The letter was published within the scope and authority of Defendant, Marshall's, position as the Chairman of the Board of Directors of United Electric. The letter was published only to the Plaintiff and to Mr. Marshall's fellow board members.

12. Based upon the foregoing, the Defendants assert a demurrer to Count III of the complaint.

IV. DEMURRER – TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

13. In Count IV of the complaint, Plaintiff purports to assert against Defendant, Marshall, a cause of action for tortious interference with contractual relations. Specifically, it is alleged that the Defendant's statements to United Electric board members, as set forth in the October 16, 2002 letter, constituted a tortious interference with the Plaintiff's employment contract with United Electric.

14. Under Pennsylvania law, when a claim for intentional interference is based upon an employment contract and where the employment is terminated by an agent of the employer acting within the scope of his agency, there is no basis to assert a tortious interference claim against that agent.

15. Based upon the foregoing, the Defendants assert a demurrer to Count IV of the complaint.

V. DEMURRER – ATTORNEY'S FEES

16. In Counts I, III and IV of the complaint, the Plaintiff demands an award of attorney's fees.

17. Under Pennsylvania law, attorney's fees cannot be awarded in connection with any of the claims asserted in these counts. There is no express statutory allowance for the imposition of such fees and there is no provision of the employment contract that would permit the Plaintiff to recover such fees.

18. Based upon the foregoing, Defendants assert a demurrer to those aspects of Counts I, III and IV of the complaint in which the Plaintiff asserts a demand for attorney's fees.

CERTIFICATE OF SERVICE

A true and correct copy of the within paper or pleading was served on all parties or their counsel of record by hand delivery or first class mail on the D²³ day of January, 2003

ELDERKIN, MARTIN, KELLY & MESSINA

By Craig A. Markham

Respectfully submitted,

ELDERKIN, MARTIN, KELLY & MESSINA

By Craig A. Markham

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IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,

Plaintiff,

v

UNITED ELECTRIC COOPERATIVE, INC.
and STEPHEN A. MARSHALL

Defendants.

Craig W. DeBower
Civil Action No. AD02-41333

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The Honorable William Shaffer

PLAINTIFF'S ANSWER TO
DEFENDANTS'
PRELIMINARY OBJECTIONS

Filed on behalf of:

Craig W. DeBower,
Plaintiff

Counsel of Record
for this party:

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Pa. Id. No. 16726

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IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,)
Plaintiff,) Civil Action No.:AD02-11333
v)
UNITED ELECTRIC COOPERATIVE, INC.) The Honorable William Shaffer
and STEPHEN A. MARSHALL)
Defendants.) JURY TRIAL DEMANDED

**PLAINTIFF'S ANSWER TO DEFENDANTS'
PRELIMINARY OBJECTIONS**

COMES NOW the Plaintiff, Craig W. DeBower, by his attorney, John W. Murtagh, Jr. and, pursuant to Pennsylvania Rules of Civil Procedure 1017 and 1028, files this, his ANSWER TO DEFENDANTS' PRELIMINARY OBJECTIONS, of which the following is a statement:

1. Admitted in part and Denied in part. The first sentence of Defendants' Paragraph 1 is admitted. The second sentence is denied as stated. By way of further Answer, Plaintiff states that there are four counts in his Complaint, i.e. Count I, a Breach of Contract claim against the cooperative defendant; Count II, a Wage Payment and Collection Law claim against both defendants; Count III, an Injurious Falsehood claim against the individual defendant; and Count IV, an Intentional Interference claim against the individual defendant.
2. Admitted in part and Denied in part. Except as stated in (e), below,

Plaintiff denies the allegations of Defendants' Paragraph 2. By way of further Answer,

Plaintiff states:

- a. Venue is proper in Butler County since Plaintiff did, at all times relevant to this Complaint, reside in Butler County and resides in Butler County at present, and since venue in Plaintiff's county of residence is proper under the provisions of the Wage Payment and Collection Law, 43 P.S. §260.1 et seq;
- b. Denied. Defendant has misapplied the law to the allegations of this Complaint;
- c. Denied. Plaintiff has brought an injurious falsehood claim in Count III, and not a claim for defamation which is a separate tort not pled herein;
- d. Denied. Defendant has misstated or misapplied the law to the facts of the case;
- e. Admitted. The generic and customary demand for attorney's fees in Counts I, III, and IV, asserted in the normal course of pleadings, may be stricken as surplusage, subject to reassertion, should the law permit the same at the time of verdict;

3. Admitted in part and Denied in part. It is admitted that Defendants have filed an affidavit of Brenda Swartzlander, and that Paragraphs 1, 3, 4, 5 and 6 thereof are truthful statements of fact; Plaintiff is without facts sufficient to determine the truth or falsity of the allegations of Paragraphs 2, 7 and 8 of the said affidavit and therefore denies the same. By way of further Answer, Plaintiff states that Plaintiff is aware that

Defendant cooperative's board of directors discussed Plaintiff's residence location, and thereafter suspended him with pay on or about September 23, 2002, but Defendants' undated, compound allegations in Paragraph 7 of the affidavit are not subject to response in the present state of the record and are therefore denied. By way of further Answer, Plaintiff admits that Defendants have filed a brief in support of their pleading, but denies that the same fully, fairly, accurately and properly states the law of the Commonwealth of Pennsylvania applicable to this case and therefore denies the same as asserted therein, except to the extent of any admission expressly made by Plaintiff in this Answer, and notes that Plaintiff's Brief in Opposition to Defendants' Preliminary Objections is to be filed on March 21, 2003.

4. Admitted in part and Denied in part. The allegations of the second, third, fifth and sixth sentences of Defendants' Paragraph 4 are admitted; the allegations of the first, fourth, eighth and ninth sentences are denied; the Plaintiff is without sufficient facts to respond to the undated, compound allegations of the seventh sentence, and therefore respectfully denies the same.

5. Denied. By way of further Answer, the Plaintiff respectfully states that the Defendants have erroneously stated the law applicable to the issue of venue.

6. Denied as stated. Plaintiff has merely indicated in Paragraph 14 that he has suffered "emotional upset" and has not made a demand for relief for the same in the First Count; rather, the said assertion of harm in Paragraph 14 was incorporated by reference for relief in Paragraph 20 of the Third Count where relief for such damage is proper.

7. Admitted. By way of further Answer, Plaintiff admits that Plaintiff is not

entitled to such relief in Count I, but denies that he has sought such relief in Count I (or in Counts II and IV).

8. Admitted in part and Denied in part. It is admitted that Defendants assert such a demurrer; it is denied that such a demurrer is proper, as asserted by Defendants, however.

9. Admitted in part and Denied in part. The allegations of the first sentence of Defendants' Paragraph 9 are denied; the allegations of the second sentence of Defendants' paragraph 9 are admitted. By way of further Answer, Plaintiff states that Count III of his Complaint sounds in tort for redress of the individual defendant's conduct constituting injurious falsehood, a tort separate and apart from defamation.

10. Denied. By way of further Answer, and to the extent that the allegations of Defendants' Paragraph 10 are relevant to the instant action, Plaintiff denies the same, asserts that the document speaks for itself and is clearly capable of defamatory meaning.

11. Denied. Plaintiff denies each and every allegation, and each and every alleged factual and legal assertion or conclusion contained therein. By way of further Answer, Plaintiff specifically denies the allegations of the third sentence of Paragraph 11 since there is no record support for the same and since the said letter has at least been disseminated to Ms. Schwartzlander, the Commonwealth Department of Labor and Industry and perhaps others, such as the typist thereof, subject to discovery and proof.

12. Admitted in part and Denied in part. It is admitted that Defendants have asserted such a demurrer; it is denied that said demurrer is legally proper or sound.

13. Admitted in part and Denied in part. The allegations of the first sentence of Defendants' Paragraph 13 are admitted; the allegations of Defendants' second sentence thereof are Denied. By way of further Answer, the allegations of intentional interference are not limited to the October 16, 2002 letter, but rather contained in Paragraphs 22 and 23 of Plaintiff's Complaint, incorporated into Count IV by Paragraph 25 thereof.

14. Denied as stated. Defendants have correctly stated the law of the Commonwealth, but assumed, incorrectly, that Defendant Marshall was acting as "an agent of the employer acting within the scope of his agency", an assertion contradicted, inter alia, by the unanswered allegations of Paragraphs 21 and 27 of the Plaintiff's Complaint.

15. Admitted in part and Denied in part. It is admitted that Defendants have asserted such a demurrer; it is denied that said demurrer is legally proper or sound.

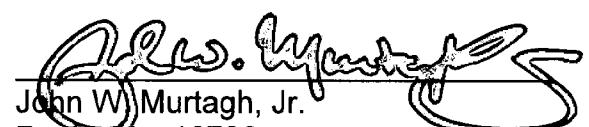
16. Admitted.

17. Admitted.

18. Admitted.

WHEREFORE, Plaintiff respectfully requests that Defendants' Preliminary Objections be overruled, and Defendants ordered to file an Answer to Plaintiff's Complaint.

Respectfully submitted,


John W. Murtagh, Jr.
Pa. Id. No. 16726
Murtagh & Cahill
110 Swinderman Road
Wexford, PA 15090
(724) 935-7555

Counsel for Plaintiff, Craig W. DeBower

VERIFICATION

I verify that the statements made in the foregoing pleading, 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.

Date: 2/10/03

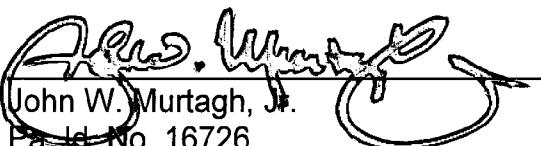
Craig W. DeBower
Craig W. DeBower

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 10th day of February, 2002, a true and correct copy of the within Plaintiff's Answer to Defendants' Preliminary Objections, was served upon counsel of record, by United States Mail, First Class, postage prepaid to:

Craig A. Markham, Esquire
Elderkin, Martin, Kelly and Messina
150 East Eighth Street
Erie, PA 16501

Respectfully submitted,



John W. Murtagh, Jr.
Pa. Id. No. 16726
Murtagh & Cahill
110 Swinderman Road
Wexford, PA 15090
(724) 935-7555

Counsel for Plaintiff, Craig W. DeBower

IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,)
Plaintiff)
)
v.) Civil Action No. AD 02 - 11333
)
UNITED ELECTRIC COOPERATIVE,)
INC. and STEPHEN A. MARSHALL,)
Defendants) JURY TRIAL DEMANDED

PROTHONOTARY'S
OFFICE-BUTLER CO.
ENTERED & FILED:
2003 MAR 27 A/G: Ob

SUPPLEMENTAL AFFIDAVIT OF BRENDA SWARTZLEANDER

COMMONWEALTH OF PENNSYLVANIA)
) : SS
COUNTY OF CLEARFIELD)

1. I am employed by United Electric Cooperative, Inc. in the capacity of general manager.

2. By virtue of my employment with United Electric, I am familiar with and knowledgeable of all of the facts set forth in this affidavit.

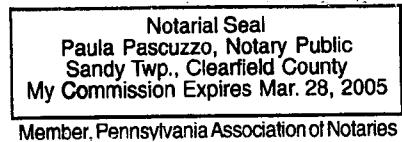
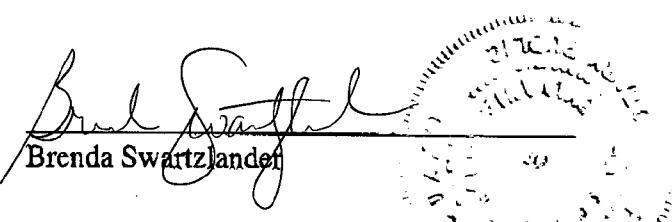
3. The employment agreement between United Electric Cooperative, Inc. and the Plaintiff, dated October 29, 2001 (a copy of which is attached to the Complaint as Exhibit B),

states that if the Plaintiff is terminated without cause, he will continue to receive his salary "payable in the usual way for six (6) months." *Employment Agreement, ¶7(c).*

4. The "usual way" salary payments were made to the Plaintiff was that the bank of United Electric Cooperative, Inc., located in Indiana, Pennsylvania, would send a direct deposit to the Plaintiff's bank account at a designated banking branch located in Dubois, Pennsylvania. Plaintiff had expressly authorized United Electric Cooperative, Inc. to make these direct deposits. Salary payments were not sent or delivered to the Plaintiff's place of residence.

FURTHER THE AFFIANT SAYETH NOT.

COMMONWEALTH OF PENNSYLVANIA)
: SS.
COUNTY OF CLEARFIELD)



ON THIS, the 25th day of March, 2003, before me a Notary Public, the undersigned officer, personally appeared Brenda Swartzlander, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Paula Pasquini

CERTIFICATE OF SERVICE

I certify that on the 26th day of March, 2003, I served a copy of the Supplemental Affidavit of Brenda Swartzlander on the following individual and in the manner stated below:

U.S. First Class Mail, Postage Prepaid and Facsimile:

John W. Murtagh, Jr., Esquire
Murtagh & Cahill
110 Swinderman Road
Wexford, PA 15090-8613

Attorney for Plaintiff

Respectfully submitted,

ELDERKIN, MARTIN, KELLY & MESSINA

By



Craig A. Markham, Esquire
Gery T. Nietupski, Esquire
Attorneys for Defendants
150 East Eighth Street
Erie, Pennsylvania 16501
(814) 456-4000

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,

A.D. No. 02-11333

Plaintiff,

v.

UNITED ELECTRIC COOPERATIVE, INC.
and STEPHEN A. MARSHALL,

Defendants.

For Plaintiff: John W. Murtagh, Jr., Esq.
For Defendants: Craig A. Markham, Esq.

April 8, 2003

2003 APR - 9 A 9:51
PROTHONOTARY'S
OFFICE-BUTLER CO.
ENTERED & FILED
John W. Murtagh
PROTHONOTARY

MEMORANDUM OPINION AND ORDER OF COURT

Before the Court are Defendants' Preliminary Objections to Plaintiff's Complaint.

For the reasons set forth below the Defendants' Preliminary Objection to venue is sustained and the case is to be transferred to Clearfield County Court of Common Pleas.

This action arose from Plaintiff's termination as the president and CEO of the Defendant United Electric Cooperative, Inc. (hereinafter "United Electric"). By a letter dated October 16, 2002, the chairman of the Untied Electric Board, Defendant Stephen A. Marshall (hereinafter "Marshall"), informed Plaintiff that the board had decided to terminate his employment. This letter stated that this decision had been based on Plaintiff's misrepresentation of facts concerning the completion of evaluations for every employee and Plaintiff's moving to Butler County, and refusal to move back into the United Electric's service territory. Copies of this letter were delivered to the board members. On December 20, 2002, Plaintiff filed a Complaint alleging breach of contract against United Electric, a claim under the Pennsylvania Wage Payment and Collection Law against United Electric and Marshall, injurious falsehood against Marshall, and

DeBower v. United Electric
AD No. 02- 11333

intentional interference with contractual relations against Marshall. Defendants filed Preliminary Objections to Plaintiff's Complaint.

The first Preliminary Objection that Defendants raise to Plaintiff's Complaint is that venue does not properly lie in Butler County. Defendants assert that pursuant to Pa.R.C.P. 2179 a corporation such as Untied Electric can only be sued in the county where its registered office and principal place of business is located, where it regularly conducts business, where the cause of action arose, or where a transaction or occurrence took place out of which the cause of action arose. Defendants argue that Butler County meets none of these criteria and consequently venue in Butler County is improper. Defendants request that Plaintiff's Complaint be dismissed for improper venue or transferred to Clearfield County.

In response to this Objection, Plaintiff asserts that proper venue lies in Butler County pursuant to Pa.R.C.P. 1006(a), which provides that an action may be brought only in a county where the individual may be served, where the cause of action arose, or where a transaction or occurrence took place out of which the cause of action arose. Plaintiff supports his contention that venue is proper under 1006(a) by pointing to the holding in Lucas Enterprises v. Paul C. Harman Co., 417 A.2d 720 (Pa. Super. 1980). In this case the court found that in a breach of contract action alleging failure to make payment, absent an agreement to the contrary, payment is due at the plaintiff's residence or place of business, and venue is proper there. Id at 721. Plaintiff argues that Count I and II of his Complaint raise claims of payments due to him as the result of his termination. At the

DeBower v. United Electric
AD No. 02- 11333

time of his termination Plaintiff had no place of business and his residence was in Butler County. Thus, Plaintiff contends that venue is entirely proper in Butler County.

The Court first notes that the payment Plaintiff alleges is due to him is that provided for in ¶ 7 (b) of his October 20, 2001 Employment Agreement. This paragraph of the agreement provides for six months of compensation and benefits if termination is without cause. Paragraph 7(b) sets forth that this additional six months of salary is to be payable in "the usual way". At the hearing on the Preliminary Objections now before the Court, counsel for Defendants set forth that the "usual way of payment" was direct deposit to Plaintiff's bank and not sending payment to his home address in Butler County. Thus, Plaintiff's assertion that payment was due at his Butler County home address, and so venue is proper in this County is without merit.

Furthermore, the Lucas Enterprises case, which Plaintiff cites as the basis for venue is not controlling in the present matter, for, it contains facts that are distinct from the facts of the instant action. In Lucas Enterprises, the defendant had retained an Allegheny County plaintiff to find a buyer for defendant's coal leases. When the buyer was found, and the leases were purchased, plaintiff demanded its 5 percent finder's fee. Although detailed facts are not given in the Lucas Enterprises Superior Court opinion, it appears that the Allegheny County plaintiff, in an effort to find a buyer, would have had to work and communicate with potential buyers from its Allegheny County offices. Consequently, the transaction of finding a buyer and perfecting a sale, for which the plaintiff sought payment, occurred in Allegheny County where the court ruled venue was proper. Similarly, in other cases where venue was found to lie where payment upon a

DeBower v. United Electric
AD No. 02- 11333

contract was due, more than this sole connection with the forum could be found. In Triffin v. Turner, 501 A.2d 271 (Pa. Super. 1985), the court ruled that venue was proper in Philadelphia County where payment was received. However, the contract in that case was to supply uniforms and the supplier maintained a place of business in Philadelphia County. The transactions in Triffin occurred in Philadelphia County as the uniforms were supplied from a location in that County. Consequently, there were more connections with the forum than the mere fact that payment was received in this Philadelphia County, which was the basis for venue cited by the Triffin Court. Thus, there is no authority that supports Plaintiff's contention that venue can properly lie where the only connection with the forum is that it is a county where payment is due.

In the present case it is clear that the causes of action alleged by Plaintiff did not arise in Butler County. For, neither party disputes that Plaintiff worked for Untied Electric out of its Clearfield County office and that Plaintiff signed his contract for employment at this same office. Furthermore, the Untied Electric board of directors were present in the Clearfield County office when they voted to terminated Plaintiff's employment. All transactions and occurrences relating to the present matter took place in Clearfield County. Moreover, it is obvious that United Electric does not regularly conduct business in Butler County, nor does it have a registered office and principal place of business in this County. Furthermore, neither party contests the fact the Defendant Marshall could not properly be served in Butler County. Consequently, the only basis for venue in Butler County that can be asserted is that the alleged payment due to Plaintiff may be payable by direct deposit to Plaintiff's account in a Butler County bank. As was

DeBower v. United Electric
AD No. 02- 11333

stated above, without more, this one small connection is not enough to make venue in Butler County proper. Therefore, Defendants' Preliminary Objection to venue is sustained. Accordingly, this matter shall be transferred to Clearfield County.

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,

A.D. No. 02-11333

Plaintiff,

v.

UNITED ELECTRIC COOPERATIVE, INC.
and STEPHEN A. MARSHALL,

Defendants.

William R. Shaffer
PROTHONOTARY
2003 APR - 9 A.D. 51
OFFICE-BUTLER CO.
ENTERED & FILED

ORDER OF COURT

And Now, this the 8th day of April 2002, upon consideration of Defendants' Preliminary Objections to Plaintiffs' Amended Complaint, it is hereby Ordered that Defendants' Objection to venue is sustained. The Prothonotary is hereby Directed to transfer the above record together with a certified copy of the docket to the Clearfield County Court of Common Pleas, pursuant to Rule 1006(d)(3) of the Pennsylvania Rules of Civil Procedure.

By the Court,

William R. Shaffer
William R. Shaffer, Judge

4/9/03 Copies of Order mailed to: John W. Murtagh, Jr., Craig A. Markham-
Gery T. Nietupski

IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,
Plaintiff

v.

UNITED ELECTRIC COOPERATIVE,
INC. and STEPHEN A. MARSHALL,
Defendants

Civil Action No. AD 02 - 11333

LS
PROTHONOTARY'S
OFFICE-BUTLER CO.
ENTERED & FILED
PROTHONOTARY

Type of Pleading: AFFIDAVIT OF BRENDA
SWARTZLANDER

Filed on Behalf of Defendants

Counsel of Record for this Party:

Craig A. Markham, Esquire
Supreme Court I.D. 38531
Gery T. Nietupski, Esquire
Supreme Court I.D. 41488
Elderkin, Martin, Kelly & Messina
150 East Eighth Street
Erie, Pennsylvania 16501
(814) 456-4000

IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,)
Plaintiff)
)
v.) Civil Action No. AD 02 - 11333
)
UNITED ELECTRIC COOPERATIVE,)
INC. and STEPHEN A. MARSHALL,)
Defendants) JURY TRIAL DEMANDED

AFFIDAVIT OF BRENDA SWARTZLANDER

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF Clearfield)

1. I am employed by United Electric Cooperative, Inc. in the capacity of general manager.
2. By virtue of my employment with United Electric, I am familiar with and knowledgeable of all of the facts set forth in this affidavit.
3. The principal place of business and registered office of United Electric is located in DuBois, Clearfield County, Pennsylvania.

4. United Electric does not regularly conduct any business within Butler County, Pennsylvania.

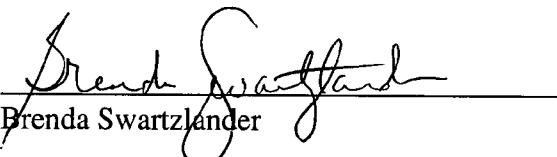
5. United Electric has no office nor any place of business within Butler County, Pennsylvania.

6. The Plaintiff's contract of employment, dated October 29, 2001 and marked as Exhibit B to the complaint, was executed by the Plaintiff at a time when the Plaintiff was present at the United Electric office in DuBois, Pennsylvania. Therefore, the contract was formed in Clearfield County, PA.

7. The United Electric board of directors was present at the United Electric office in DuBois, Pennsylvania when they considered and then voted to terminate the Plaintiff's contract of employment.

8. All administrative action taken in connection with the termination of the Plaintiff's contract of employment occurred within Clearfield County, Pennsylvania.

FURTHER THE AFFIANT SAYETH NOT.



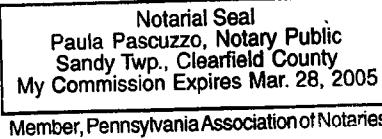
Brenda Swartzlander

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF Clearfield) : SS.
)

ON THIS, the 1st day of January, 2003, before me a Notary Public, the undersigned officer, personally appeared Brenda Swartzlander, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Paula Pascuzzo



IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,
Plaintiff

v.

UNITED ELECTRIC COOPERATIVE,
INC. and STEPHEN A. MARSHALL,
Defendants

Civil Action No. AD 02 - 11338

Type of Pleading: APPEARANCE

Filed on Behalf of Defendants

Counsel of Record for this Party:

Craig A. Markham, Esquire
Supreme Court I.D. 38531
Gery T. Nietupski, Esquire
Supreme Court I.D. 41488
Elderkin, Martin, Kelly & Messina
150 East Eighth Street
Erie, Pennsylvania 16501
(814) 456-4000

TS
PROTHONOTARY'S
OFFICE-BUTLER CO.
ENTERED & FILED

2003 JAN 10 A 8:55

IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,)
Plaintiff)
)
v.) Civil Action No. AD 02 - 11333
)
UNITED ELECTRIC COOPERATIVE,)
INC. and STEPHEN A. MARSHALL,)
Defendants) JURY TRIAL DEMANDED

APPEA R A N C E

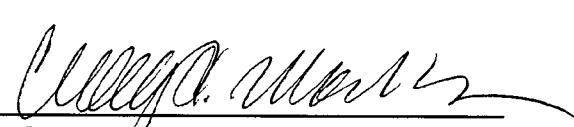
TO THE PROTHONOTARY:

Kindly enter our appearance on behalf of the Defendants, United Electric Cooperative, Inc. and Stephen A. Marshall, in the above-captioned matter.

Respectfully submitted,

ELDERKIN, MARTIN, KELLY & MESSINA

By


Craig A. Markham, Esquire
Gery T. Nietupski, Esquire
Attorneys for Defendants
150 East Eighth Street
Erie, Pennsylvania 16501
(814) 456-4000

CERTIFICATE OF SERVICE
A true and correct copy of the within paper or
pleading was served on all parties or their counsel of
record by hand delivery or first class mail on
the 8 day of January, 2003
ELDERKIN, MARTIN, KELLY & MESSINA
By Craig A. Markham

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER
Plaintiff

A. D. 02-11333

v
UNITED ELECTRIC COOPERATIVE, INC.
and STEPHEN A. MARSHALL
Defendants

PROTHONOTARY'S
OFFICE-BUTLER CO.
ENTERED & FILED
2003 FEB - 5 A 9:45
John R. Dabbs
PROTHONOTARY

ORDER OF COURT

AND NOW, Febr 4, 2003, the Court sets March 28, 2003 at 10:00 o'clock
a.m. in Courtroom # 2 before Judge William R. Shaffer as the time and place for oral
argument on Preliminary Objections filed on behalf of Defendant.

Brief for the non-moving party to be filed no later than March 21, 2003.

BY THE COURT

LAB

William R. Shaffer
JUDGE

02/05/2003 COPIES TO: JOHN MURTAGH, JR.
CRAIG MARKHAM-GERY NIETUPSKI

2002-11333 CRAIG W DEBOWER (vs) UNITED ELECTRIC COOPERATIVE

Reference No...: Filed.....: 12/20/2002
 Case Type....: COMPLAINT Time.....: 8:41
 Judgment.....: .00 Execution Date: 0/00/0000
 Judge Assigned: Jury Trial...
 Disposed Desc.: Disposed Date: 0/00/0000
 ----- Case Comments ----- Higher Crt 1.: Higher Crt 2.:

General Index*****
Attorney InfoDEBOWER CRAIG W
522 GRANDSHIRE DR
CRANBERRY TOWNSHIP PA 16066

PLAINTIFF

MURTAGH JOHN W JR

UNITED ELECTRIC COOPERATIVE
INC
PO BOX 688
INTERSTATE 80 AND ROUTE 255
DUBOIS PA 15801

DEFENDANT

MARKHAM CRAIG A

MARSHALL STEPHEN A
R D 1
LUTHERSBURG PA 15848

DEFENDANT

MARKHAM CRAIG A
NIETUPSKI GERY T

03-583-CD

FILED billablem 12:46 AM
APR 21 2003*****
* Date Entries*****
William A. Shaw
Prothonotary

12/20/2002 SHERIFF'S COSTS: JWM PD \$69.00 FIRST ENTRY -----
 12/20/2002 COMPLAINT IN CIVIL ACTION - IN EXCESS OF \$25000.00
 12/20/2002 021 Image page(s) exist(s) for this entry
 12/20/2002 CERT COPY TO SHERIFF
 12/20/2002 DEPUTIZE SHERIFF OF CLEARFIELD COUNTY
 1/06/2003 SHERIFF'S RETURN: AS TO SERVICE OF COMPLAINT IN CIVIL ACTION
 NOTICE TO DEFEND COUNTS & VERIFICATION UPON UNITED ELECTRIC
 COOPERATIVE INC AT I-80 & RT 255 DUBOIS CLEARFIELD COUNTY PA BY
 HANDING TO DAWN HAWKINS CUSTOMER SERVICE
 SHERIFF'S RETURN: AS TO SERVICE OF COMPLAINT IN CIVIL ACTION
 NOTICE TO DEFEND COUNTS & VERIFICATION UPON STEPHEN A MARSHALL AT
 RD #1 LUTERSBURG CLEARFIELD COUNTY PA BY HANDING TO DAWN HAWKINS
 CUSTOMER SERVICE AT PLACE OF BUSINESS SO ANSWERS: CHESTER HAWKINS
 SHERIFF
 002 Image page(s) exist(s) for this entry
 1/10/2003 APPEARANCE OF CRAIG A MARKHAM AND GERY T NIETUPSKI ON BEHALF OF
 DFTS
 002 Image page(s) exist(s) for this entry
 1/24/2003 DFTS' PRELIMINARY OBJECTIONS
 1/24/2003 007 Image page(s) exist(s) for this entry
 1/24/2003 DFTS' BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS
 1/24/2003 018 Image page(s) exist(s) for this entry
 1/24/2003 AFFIDAVIT IF BRENDA SWARTZLANDER
 1/24/2003 004 Image page(s) exist(s) for this entry
 2/05/2003 ORDER OF COURT DATED FEB 4 2003 COURT SETS MARCH 28 2003 AT
 10:00 AM IN COURTROOM #2 BEFORE JUDGE WILLIAM R SHAFFER AS TIME &
 PLACE FOR ORAL ARGUMENT ON PRELIMINARY OBJECTIONS FILED ON BEHALF
 OF DEFENDANT BRIEF FOR THE NON-MOVING PARTY TO BE FILED NO LATER
 THAN MAR 21 2003
 001 Image page(s) exist(s) for this entry
 2/05/2003 COPIES OF ORDER MAILED TO JOHN MURTAGH JR CRAIG MARKHAM-GERY
 NIETUPSKI
 2/11/2003 PLF'S ANSWER TO DFTS' PRELIMINARY OBJECTIONS

2002-11333 CRAIG W DEBOWER (vs) UNITED ELECTRIC COOPERATIVE

Reference No...: Filed.....: 12/20/2002
 Case Type....: COMPLAINT Time.....: 8:41
 Judgment.....: .00 Execution Date 0/00/0000
 Judge Assigned: Jury Trial...
 Disposed Desc.: Disposed Date 0/00/0000
 Higher Crt 1.:
 Higher Crt 2.:
 ----- Case Comments -----

2/11/2003 009 Image page(s) exist(s) for this entry
 3/20/2003 PLF'S BRIEF IN OPPOSITION TO DFTS' PRELIMINARY OBJECTIONS
 3/20/2003 007 Image page(s) exist(s) for this entry
 3/27/2003 SUPPLEMENTAL AFFIDAVIT OF BRENDA SWARTZLANDER
 3/27/2003 003 Image page(s) exist(s) for this entry
 4/09/2003 MEMORANDUM OPINION AND ORDER OF COURT DATED 4/8/03 IT IS ORDERED
 THAT DFTS' OBJECTION TO VENUE IS SUSTAINED PROTHONOTARY DIRECTED
 TO TRANSFER ABOVE RECORD TOGETHER WITH CERT COPY OF DOCKET TO
 CLEARFIELD CO COURT OF COMMON PLEAS PURSUANT TO RULE 1006(D) (3) OF
 PA RULES OF CIVL PROCEDURE
 4/09/2003 COPY OF ORDER & MEMORANDUM MAILED TO JOHN W MURTAGH JR CRAIG A
 MARKHAM - GERY T NIETUPSKI
 4/16/2003 CASE TRANSFERRED TO CLEARFIELD COURT BY ORDER OF COURT BY CERT
 MAIL (7001 0320 0001 2914 2796)
 ----- LAST ENTRY -----

* Escrow Information *
* Fees & Debits Beg Bal Pymts/Adj End Bal *

TAX ON CMPLT	.50	.50	.00
JCS/ATJ	10.00	10.00	.00
COMPLAINT FILED	79.00	79.00	.00
PRO AUTOMATION	5.00	5.00	.00
-----	94.50	94.50	.00

* End of Case Information *

Commonwealth of Pennsylvania

ss

County of Butler

Certified to be true and correct copy of the
original this 16th day
of April 2003

James Waller

COMPLAINT IN CIVIL ACTION, NOTICE TO DEFEND, COUNTS & VERIFICATION

RECD
ORIGIN 12/20/02
BUTLER

CASE# 2002-11333

FILED: 12/20/02 LDTS: 01/19/03

PLAINTIFF
CRAIG W. DEBOWERDEFENDANT
UNITED ELECTRIC COOPERATIVE, INC.
STEPHEN A. MARSHALL

✓ DEPUTIZE CLEARFIELD CO. ON 12/20/02

SERVE:

X UNITED ELECTRIC COOPERATIVE, INC.
INTERSTATE 80 & RT. 255
DUBOIS, PA. 15801
814-371-8570

03-15-03 RECEIVED FAX FROM CLEARFIELD COUNTY. 01-06-03 AT 11:20 AM DEPUTY RYEN COUDRIET SERVED THE DEFENDANT UNITED ELECTRIC COOPERATIVE INC. BY SERVING DAWN, CUSTOMER SERVICE AT THE PLACE OF BUSINESS INTERSTATE 80 & RT 255 DUBOIS PA 15801.

X STEPHEN A. MARSHALL

RD. 1
LUTERSBURG, PA. 15848
OR C/O UNITED ELECTRIC COOP., INC.
INTERSTATE 80 & RT. 255
DUBOIS, PA. 15801
814-371-8570

03-15-03 RECEIVED FAX FROM CLEARFIELD COUNTY. 01-06-03 AT 11:20 AM DEPUTY RYEN COUDRIET SERVED THE DEFENDANT STEPHEN A MARSHALL BY SERVING DAWN HAWKINS, CUSTOMER SERVICE AT HIS PLACE OF BUSINESS UNITED ELECTRIC CORP, INTERSTATE 80 & RT 255 DUBOIS PA 15801.

SO ANSWERS:



DENNIS C. RICKARD, SHERIFF, COUNTY OF BUTLER

ATTORNEY
JOHN W. MURTAGH, JR., ESQ.
110 S WINDERMAN RD.
WEXFORD, PA. 15090
724-935-7555

Writ		\$9.00	12/20/02 IND: \$45.00 CK# 1623
SurCharge		\$20.00	JOHN W. MURTAGH, JR., ESQ.
Notary		\$0.00	
Service		\$15.00	
Copies		\$10.00	
NEI		\$0.00	
Post		\$0.00	
CERT.MAIL		\$0.00	
Mileage		\$6.00	
DEPUTIZED CLEARFIELD CO.		\$9.00	
Total		\$69.00	BILLED ATTORNEY \$ 24.00 ON 03/17/03 PLEASE SUBMIT PAYMENT IMMEDIATELY SO WE CAN SATISFY WITH PROTHONOTARY.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 13469

DeBOWER, CRAIG W.

AD 02-11333

VS.

UNITED ELECTRIC COOPERATIVE INC. & STEPHEN A. MARSHALL

COMPLAINT

SHERIFF RETURNS

NOW JANUARY 6, 2003 AT 11:20 AM EST SERVED THE WITHIN SUMMONS AND COMPLAINT ON UNITED ELECTRIC COOPERATIVE INC., DEFENDANT AT EMPLOYMENT, 1-80 & RT. 255, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DAWN HAWKINS, CUSTOMER SERVICE, A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS & COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: COUDRIET/RYEN

NOW JANUARY 6, 2003 AT 11:20 AM EST SERVED THE WITHIN SUMMONS & COMPLAINT ON STEPHEN A. MARSHALL, DEFENDANT AT EMPLOYMENT, UNITED ELECTRIC, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DAWN HAWKINS, CUSTOMER SERVICE, A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: COUDRIET/RYEN

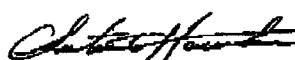
Return Costs

Cost	Description
36.72	SHFF. HAWKINS PD. BY: ATTY.

Sworn to Before Me This

____ Day Of _____ 2003

So Answers,



Chester A. Hawkins
Sheriff

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

CRAIG W. DeBOWER

-vs-

No. 03 - 583 - CD

UNITED ELECTRIC COOPERATIVE,
INC. and STEPHEN A. MARSHALL

OPINION AND ORDER

On October 16, 2002, Plaintiff was fired as President and CEO of Defendant United Electric Cooperative, Inc. by letter from Defendant Stephen A. Marshall, Chairman of the United Electric Cooperative, Inc. Board. The reasons given were that Plaintiff had falsely stated the situation concerning employee evaluations and had moved his residence from DuBois to Butler County in violation of his job description requirements. On December 20, 2002, Plaintiff commenced this law suit seeking damages alleging emotional distress from a breach of contract, defamation (injurious falsehood) and intentional interference with contractual relations and also seeking to recover attorney's fees.

Defendants have filed Preliminary Objections seeking a change of venue and demurring to the causes of action set forth above.

The Court of Common Pleas of Butler County, where the action was initially filed, addressed the issue of venue and granted the Preliminary Objections with regards thereto and certified the matter to the Court of Common Pleas of Clearfield County for further disposition. The remaining Preliminary Objections are now before this Court for determination.

FILED

JUL 21 2003

William A. Shaw
Prothonotary

Upon agreement of the parties this Court finds that Plaintiff's demand for relief alleging emotional distress in Count I shall be and is hereby dismissed and Plaintiff's demand for attorney's fees shall be dismissed in all aspects except as requested in Count II.

Defendant Marshall next demurs to Plaintiff's claim of defamation (injurious falsehood) on the basis that Marshall's letter of October 16,2002, containing the alleged defamatory statements are in fact not defamatory and further that Defendant Marshall enjoys absolute privilege to the claim.

Marshall first argues that a communication is defamatory only if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him, and in support thereof cites Maier v. Maretti, 671 A.2d 701 (Pa. Super. 1996) which further states that communications which may annoy or embarrass the person are not sufficient as a matter of law to create an action in defamation. In Maier, the Court held that the statements clearly embarrassed the Plaintiff but in no way lowered the community's estimation of him and that this was so even if the statements were false.

The letter in the instant case signed by the Defendant and sent to the Plaintiff stated that Plaintiff was fired because he had "misrepresented facts concerning employee evaluations" and that he had been insubordinate in refusing to abide by the board's request to relocate his residence to the DuBois area, and this Court is satisfied that even if the statements embarrassed the Plaintiff, they did not rise to the level of defamation or injurious falsehood.

Moreover, this Court is satisfied that Defendant Marshall's letter is a privileged communication and therefore not actionable. The Superior Court in Sobel v. Wingard, 531 A.2d 520 (Pa. Super. 1987) held that an employer has an absolute privilege to publish

defamatory matters in notices of employee terminations. Further, one who enjoys absolute privilege is immune from liability even though he publishes the defamatory material from an improper motive, with actual malice and without reasonable and probable cause. See Sciandra v. Lynett, 187 A.2d 586 (1963). The purpose of absolute privilege is to encourage the employer's communication to the employee of the reasons for discharge by eliminating the risk that the employer will possibly be subject to liability for defamation. See Miketic v. Baron, 675 A.2d 324 (Pa.Super. 1996). Further, the privilege applies even though the termination notice also is distributed to management personnel. Sobel, Supra.

The termination letter sent by Defendant Marshall to Plaintiff was copied to members of the Board who indeed were already aware of the allegations against the Plaintiff when they voted to terminate his employment and for the above reasons, this Court will sustain Defendant Marshall's objection to Plaintiff's claim of defamation (injurious falsehood).

Defendant Marshall's final Preliminary Objection is a demurrer to Plaintiff's request for damages for intentional interference with contractual relation where Plaintiff specifically alleges that Marshall's statement to the members of the Board, which are contained in his letter of October 16, 2002, were the cause of the Board terminating Plaintiff's contract of employment.

This Court agrees with Defendant Marshall's argument that to assert a cause of action for intentional interference with contractual relations the Plaintiff must allege that Defendant improperly interfered with Plaintiff's contract with a third person. See Maier, Supra. Under the circumstances of this case, Defendant Marshall is an agent of United Electric Cooperative, Inc. and acted in that capacity (See Plaintiff's Complaint Paragraph 6). Since a corporation acts only through its agents and officers, such cannot be regarded as third parties in

contracts involving the corporation. In Rutherford v. Presbyterian-University Hospital, et al., 612 A.2d 500 (1992), the Superior Court ruled that a cause of action for intentional interference of contract requires three separate parties and parties to a contract cannot assert this cause of action against each other, and further that

Accordingly, Pennsylvania law is clear that where, as here, a claim for intentional interference is based upon an alleged "contract" or business relationship with an employer, and that relationship is terminated by an agent of the employer acting within the scope of his agency, there is no third party involved and no claim will lie.

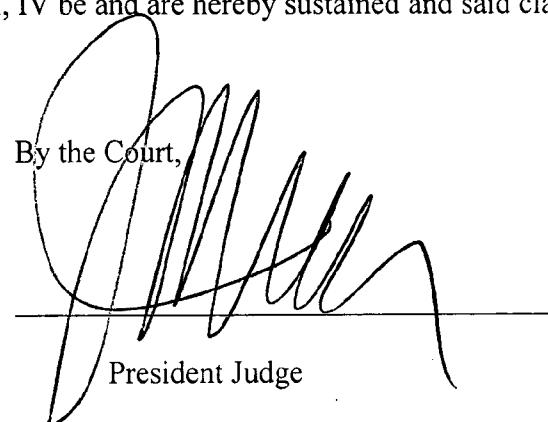
See also Adams v. US Air, Inc., 652 A.2d 329 (1994) and Daniel Adams Associates, Inc. v. Rimbach Publishing, 519 A.2d 997 (1987).

For the above reasons, this Court must also sustain Defendant Marshall's demurrer to Plaintiff's claim for tortious interference with contractual relations.

WHEREFORE, the Court enters the following:

ORDER

NOW, this 21st day of July, 2003, following argument and briefs into Preliminary Objections filed on behalf of Defendants above-named, it is the ORDER of this Court that said Objections be and are hereby granted and Plaintiff's claim for emotional distress, defamation (injurious falsehood), intentional interference with contractual relations and claim for attorney's fees in Counts I, III, IV be and are hereby sustained and said claims dismissed.

By the Court,

President Judge

FILED

013:00-Btl
JUL 21 2003

ICC Atty Murtagh
ICC Atty Markham
ICC Atty Nietupski

William A. Shaw
Prothonotary

ICC S. Mikesell



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,
Plaintiff

v.

UNITED ELECTRIC COOPERATIVE,
INC. and STEPHEN A. MARSHALL,
Defendants

Civil Action No. 03-583-CD

JURY TRIAL DEMANDED

Type of Pleading: NOTICE OF SERVICE OF
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS
ADDRESSED TO PLAINTIFF (FIRST SET)

Filed on Behalf of Defendants

Counsel of Record for this Party:

Craig A. Markham, Esquire
Supreme Court I.D. 38531
Gery T. Nietupski, Esquire
Supreme Court I.D. 41488
Elderkin, Martin, Kelly & Messina
150 East Eighth Street
Erie, Pennsylvania 16501
(814) 456-4000

FILED

AUG 08 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,)	
Plaintiff)	
)	
v.)	Civil Action No. 03-583-CD
)	
UNITED ELECTRIC COOPERATIVE,)	
INC. and STEPHEN A. MARSHALL,)	
Defendants)	JURY TRIAL DEMANDED

NOTICE OF SERVICE OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS ADDRESSED
TO PLAINTIFF (FIRST SET)

Please take notice that on the 6th day of August, 2003, Interrogatories and Requests for Production of Documents were served upon John W. Murtagh, Jr., Esquire, counsel for Plaintiff, at his office located at 110 Swinderman Road, Wexford, PA, 15090, by United States First Class Mail, postage prepaid.

Respectfully submitted,

ELDERKIN, MARTIN, KELLY & MESSINA

By Craig A. Markham

Craig A. Markham, Esquire
Gery T. Nietupski, Esquire
Attorneys for Defendants
150 East Eighth Street
Erie, Pennsylvania 16501
(814) 456-4000

CERTIFICATE OF SERVICE

A true and correct copy of the within paper or pleading was served on all parties or their counsel of record by hand delivery or first class mail on the 6th day of August, 2003
ELDERKIN, MARTIN, KELLY & MESSINA

By: Craig A. Markham

BA
FILED
mjl:2384
AUG 08 2003
mc

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

On this 8th day of August, 2003, I, William A. Shaw, Prothonotary/Clerk of Courts, served the foregoing on the following persons:

LEONARD KELLY, Plaintiff
LEONARD KELLY, Plaintiff

BA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,
Plaintiff

Civil Action No. 03-583-CD

v.

JURY TRIAL DEMANDED

UNITED ELECTRIC COOPERATIVE,
INC. and STEPHEN A. MARSHALL,
Defendants

Type of Pleading: ANSWER AND NEW
MATTER

Filed on Behalf of Defendants

Counsel of Record for this Party:

Craig A. Markham, Esquire
Supreme Court I.D. 38531
Elderkin, Martin, Kelly & Messina
150 East Eighth Street
Erie, Pennsylvania 16501
(814) 456-4000

FILED

AUG 08 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,)
Plaintiff)
)
v.) Civil Action No. 03-583-CD
)
UNITED ELECTRIC COOPERATIVE,)
INC. and STEPHEN A. MARSHALL,)
Defendants) JURY TRIAL DEMANDED

ANSWER AND NEW MATTER

AND NOW, the Defendants, by and through their attorneys, ELDERKIN, MARTIN, KELLY & MESSINA, file the following Answer and New Matter, respectfully representing as follows:

1. Admitted except to the extent that paragraph 1 of the Complaint alleges that venue is proper in Butler County. By Memorandum Opinion and Order of April 8, 2003, the Court determined that venue is proper in Clearfield County.
2. Admitted.
3. Admitted.

4. Denied. The averments of paragraph 4 of the Complaint are conclusions of law to which no response is required. The Plaintiff's contract of employment dated November 16, 1993 and the agreement of October 29, 2001 speak for themselves.

5. Admitted.

6. Admitted.

7. Denied. The averments of paragraph 7 of the Complaint are conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that Defendants breached any contractual obligations owed to the Plaintiff. The Plaintiff has received all sums due to him under his contract of employment. The Plaintiff properly was terminated for cause, which included but is not limited to the matters set forth in the letter of October 16, 2002, a copy of which is attached to the Complaint as exhibit C.

COUNT I – Breach of Contract

8. The averments of paragraphs 1 through 7 above are hereby incorporated by reference as if set forth fully herein.

9. The Plaintiff's contract of employment speaks for itself. It is denied that the Plaintiffs' contract of employment is in full force and effect through October 31, 2003 as the

Plaintiff properly was terminated for cause under the terms of his contract, which termination became effective October 16, 2002.

10. The Plaintiff's contract of employment speaks for itself.

11. Denied. The averments of paragraph 11 of the Complaint are conclusions of law to which no response is required. It is admitted that Plaintiff's employment properly was terminated for cause in full compliance with the Plaintiff's contract of employment. See exhibit C appended to the Complaint.

12. Denied. The averments of paragraph 12 of the Complaint are conclusions of law to which no response is required. It is admitted that Plaintiff's employment properly was terminated for cause in full compliance with the Plaintiff's contract of employment. See exhibit C appended to the Complaint.

13. Denied. The averments of paragraph 13 of the Complaint are conclusions of law to which no response is required. It is admitted that Plaintiff's employment properly was terminated for cause in full compliance with the Plaintiff's contract of employment. See exhibit C appended to the Complaint.

14. Denied. The averments of paragraph 14 of the Complaint are conclusions of law to which no response is required. It is admitted that Plaintiff's employment properly was

terminated for cause in full compliance with the Plaintiff's contract of employment. See exhibit C appended to the Complaint.

15. Denied. The averments of paragraph 15 of the Complaint are conclusions of law to which no response is required.

WHEREFORE, the Defendants respectfully request that this Honorable Court enter judgment in their favor and against the Plaintiff on all causes alleged, together with an award of record costs as appropriate.

COUNT II – Pennsylvania Wage Payment and Collection Law

16. The averments of paragraphs 1 through 15 above are hereby incorporated by reference as if set forth fully herein.

17. Denied. The averments of paragraph 17 of the Complaint are conclusions of law to which no response is required. It is further denied that the Plaintiff's employment was terminated solely through the acts and/or decision of Defendant, Marshall. To the contrary, the board of directors of United Electric Cooperative, Inc. made the decision to terminate the Plaintiff's employment. The termination of Plaintiff's employment was for cause and was carried out in full compliance of the relevant contract documents. Plaintiff has received all payments due to him from United Electric Cooperative, Inc.

18. Denied. The averments of paragraph 18 of the Complaint are conclusions of law to which no response is required. The averments of paragraph 17 above are hereby incorporated by reference as if set forth fully again.

19. Denied. The averments of paragraph 19 of the Complaint are conclusions of law to which no response is required.

WHEREFORE, the Defendants respectfully request that this Honorable Court enter judgment in their favor and against the Plaintiff on all causes alleged, together with an award of record costs as appropriate.

COUNT III – Injurious Falsehood

20. The averments of paragraphs 1 through 19 above are hereby incorporated by reference as if set forth fully herein.

21-24. By Opinion and Order dated July 21, 2003, this count of the Complaint was dismissed. Therefore, the Defendants are not required to respond to the allegations of Count III of the Complaint. In any event, Defendants deny that they engaged in any wrongful conduct and they deny that Plaintiff has suffered any compensable injuries, damages or losses.

WHEREFORE, the Defendants respectfully request that this Honorable Court enter judgment in their favor and against the Plaintiff on all causes alleged, together with an award of record costs as appropriate.

COUNT IV – Intentional Interference

25. The averments of paragraphs 1 through 24 above are hereby incorporated by reference as if set forth fully herein.

26-29. By Opinion and Order dated July 21, 2003, this count of the Complaint was dismissed. Therefore, the Defendants are not required to respond to the allegations of Count IV of the Complaint. In any event, Defendants deny that they engaged in any wrongful conduct and they deny that Plaintiff has suffered any compensable injuries, damages or losses.

WHEREFORE, the Defendants respectfully request that this Honorable Court enter judgment in their favor and against the Plaintiff on all causes alleged, together with an award of record costs as appropriate.

NEW MATTER

1. The Plaintiff has failed to state a claim upon which relief may be granted.

2. The Plaintiff's claims are barred by the applicable statute of limitations.

3. The Plaintiff's claims are barred by the doctrine of release and waiver.

WHEREFORE, the Defendants respectfully request that this Honorable Court enter judgment in their favor and against the Plaintiff on all causes alleged, together with an award of record costs as appropriate.

Respectfully submitted,

ELDERKIN, MARTIN, KELLY & MESSINA

By Craig A. Markham

Craig A. Markham, Esquire
Gery T. Nietupski, Esquire
Attorneys for Defendants
150 East Eighth Street
Erie, Pennsylvania 16501
(814) 456-4000

NOTICE TO PLEAD

TO: PLAINTIFF
You are hereby notified to file a written response to the enclosed new matter/preliminary objections within twenty (20) days from service hereof or a judgment may be entered against you.

ELDERKIN, MARTIN, KELLY & MESSINA

By Craig A. Markham

CERTIFICATE OF SERVICE

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— 1 —

THEORY AND PRACTICE IN THE FIELD OF TELEVISION

Classification

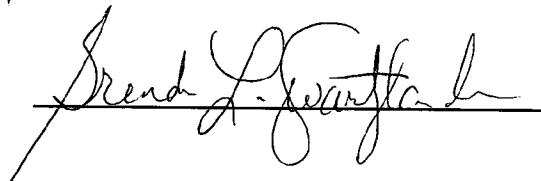
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IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,)	
Plaintiff)	
)	
)	Civil Action No. 03-583-CD
)	
UNITED ELECTRIC COOPERATIVE,)	
INC. and STEPHEN A. MARSHALL,)	
Defendants)	JURY TRIAL DEMANDED

VERIFICATION

The foregoing Answer and New Matter was drafted by legal counsel based upon information provided by me and upon information counsel has obtained from other sources. The language and words used in the Answer and New Matter were chosen by counsel based upon the information provided. I hereby state that the facts known to me, set forth in the foregoing Answer and New Matter, are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities and is given pursuant to the provisions for verification of pleadings as defined and provided for in Rule 1024 of the Pennsylvania Rules of Civil Procedure.



Dated: 7/31/03

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

CRAIG W. DeBOWER,

Plaintiff,

Civil Action No.:03-583-CD

v

**UNITED ELECTRIC COOPERATIVE, INC.
and STEPHEN A. MARSHALL**

Defendants.

**PLAINTIFF CRAIG W.
DEBOWER'S REPLY TO
DEFENDANTS' NEW MATTER**

Filed on behalf of:

**Craig W. DeBower,
Plaintiff**

**Counsel of Record
for this party:**

**John W. Murtagh, Jr., Esq.
Pa. Id. No. 16726**

**110 Swinderman Road
Wexford, PA 15090**

**(724) 935-7555
(724) 935-7099 telecopier**

FILED

AUG 21 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,)
Plaintiff,)
v) Civil Action No.03-583-CD
UNITED ELECTRIC COOPERATIVE, INC.)
and STEPHEN A. MARSHALL)
Defendants.) JURY TRIAL DEMANDED

**PLAINTIFF, CRAIG W. DeBOWER'S, REPLY
TO DEFENDANTS' NEW MATTER**

COMES NOW, the Plaintiff, Craig W. DeBower, by his attorney John W. Murtagh, Jr., Esquire and replies to the Defendants' New Matter as follows:

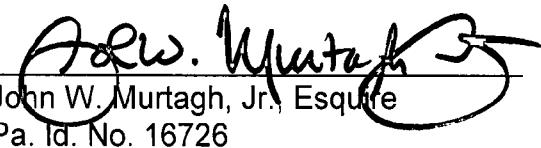
1. The averments of paragraph 1 of Defendants' New Matter state a conclusion of law to which no reply is required. By way of further reply, the Plaintiff denies each and every allegation of Defendants' New Matter, Paragraph 1, and demands strict proof thereof.

2. The averments of paragraph 2 of Defendants' New Matter state a conclusion of law to which no reply is required. By way of further reply, the Plaintiff denies each and every allegation of Defendants' New Matter, Paragraph 2, and demands strict proof thereof.

3. The averments of paragraph 3 of Defendants' New Matter state a conclusion of law to which no reply is required. By way of further reply, the Plaintiff denies each and every allegation of Defendants' New Matter, Paragraph 3, and demands strict proof thereof.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor and against the Defendants as prayed for in Plaintiff's Complaint.

Respectfully submitted,

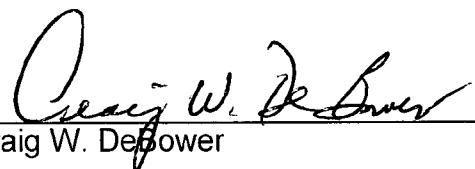

John W. Murtagh, Jr., Esquire
Pa. Id. No. 16726
Murtagh & Cahill
110 Swinderman Road
Wexford, PA 15090
(724) 935-7555

VERIFICATION

I verify that the statements made in the foregoing pleading, 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.

Date: Aug 19, 2003



Craig W. DeBower

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing Plaintiff, Craig W. DeBower's, Reply To Defendants' New Matter were served on the 19th day of August, 2003, on the following persons by first class mail, postage pre-paid.

Craig A. Markham, Esquire
Elderkin Martin Kelly Messina
150 E. 8th Street
Erie, PA 16501

Respectfully Submitted,


John W. Murtagh, Jr., Esquire

Pa. Id. No. 16726
Murtagh & Cahill
110 Swinderman Road
Wexford, PA 15090
(724) 935-7555

Counsel for Plaintiff
Craig W. DeBower

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,
Plaintiff

Civil Action No. 03-583-CD

v.

JURY TRIAL DEMANDED

UNITED ELECTRIC COOPERATIVE,
INC. and STEPHEN A. MARSHALL,
Defendants

Type of Pleading: NOTICE OF TAKING
DEPOSITION UPON ORAL EXAMINATION

Filed on Behalf of Defendants

Counsel of Record for this Party:

Craig A. Markham, Esquire
Supreme Court I.D. 38531
Elderkin, Martin, Kelly & Messina
150 East Eighth Street
Erie, Pennsylvania 16501
(814) 456-4000

FILED

JAN 22 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CRAIG W. DeBOWER,)
Plaintiff)
)
)
v.) Civil Action No. 03-583-CD
)
)
UNITED ELECTRIC COOPERATIVE,)
INC. and STEPHEN A. MARSHALL,)
Defendants) JURY TRIAL DEMANDED

NOTICE OF TAKING DEPOSITION UPON ORAL EXAMINATION

Notice is hereby given that the deposition upon oral examination of Craig W. DeBower, has been scheduled and will be taken, pursuant to Pa.R.C.P. 4007.1, on Tuesday, the 17th day of February, 2004, commencing at 10:30 a.m. at the offices of J. Michael King, Esquire, 606 Main Street, Emlenton, PA, 16373, before a Notary Public or other person duly qualified by law to administer an oath.

Respectfully submitted,

ELDERKIN, MARTIN, KELLY & MESSINA

By 

Craig A. Markham, Esquire
Attorney for Defendants
150 East Eighth Street
Erie, Pennsylvania 16501
(814) 456-4000

Date: January 19, 2004
cc: John W. Murtagh, Jr., Esquire
Adelman Reporters

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CRAIG W. DEBOWER

Plaintiff,

v

UNITED ELECTRIC
COOPERATIVE, INC.

and

STEPHEN A. MARSHALL
Defendants

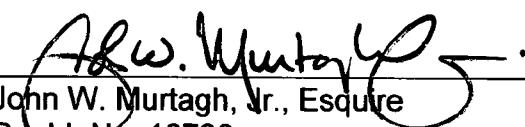
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)
CIVIL ACTION No.: 03-583-CD

PRAECIPE TO SETTLE, DISCONTINUE AND END

TO THE PROTHONOTARY:

Please mark the Plaintiff's Complaint in Equity against all Defendants, settled, discontinued and ended with prejudice.

Respectfully Submitted,


John W. Murtagh, Jr., Esquire
Pa. Id. No. 16726
Murtagh & Cahill
110 Swinderman Road
Wexford, PA 15090
(724) 935-7555

Counsel for Plaintiff
Craig W. DeBower


FILED ^{No CC}
m 11.05.04 2 Cert. of Disc.
DEC 23 2004 to Atty
William A. Shaw
Prothonotary/Clerk of Court
Copy of Cert.
to CIA

COMPLAINT IN CIVIL ACTION, NOTICE TO DEFEND, COUNTS & VERIFICATION

REC'D 12/20/02
ORIGIN BUTLER CASE# 2002-11333

FILED: 12/20/02 LDTS: 01/19/03

PLAINTIFF
CRAIG W. DEBOWER

DEFENDANT
UNITED ELECTRIC COOPERATIVE, INC.
STEPHEN A. MARSHALL

DEPUTIZE CLEARFIELD CO. ON 12/20/02

THE SERVET

UNITED ELECTRIC COOPERATIVE, INC.
INTERSTATE 80 & RT. 255
DUBOIS, PA. 15801
814-371-8570

Now after diligent search and inquiry failed to find the
within within my bailiwick.
Reason unable to locate.

Sworn and subscribed before me _____
this _____

Notary public _____

Deputy Sheriff _____
PRINT NAME _____

Sheriff _____

SIGNED, NOTARIZED RETURN FILED AT BUTLER PROTHONOTARY'S OFFICE.

ATTORNEY JOHN W. MURTAGH, JR., ESQ. 110S WINDERMAN RD. WEXFORD, PA. 15090. 724-935-7555	Writ SurCharge Notary Service Copies NEI Post CERT.MAIL Mileage	\$9.00 \$20.00	12/20/02 IND: \$45.00 CK# 1623 JOHN W. MURTAGH, JR., ESQ.
	Total	\$29.00	

COMPLAINT IN CIVIL ACTION, NOTICE TO DEFEND, COUNTS & VERIFICATION

REC'D 12/20/02
ORIGIN BUTLER

CASE# 2002-11333

FILED: 12/20/02 LDTS: 01/19/03

PLAINTIFF
CRAIG W. DEBOWER

DEFENDANT
UNITED ELECTRIC COOPERATIVE, INC.
STEPHEN A. MARSHALL

DEPUTIZE CLEARFIELD CO. ON 12/20/02

DE. 6/1
SERVE:

STEPHEN A. MARSHALL
RD. 1
LUTERSBURG, PA. 15848
OR C/O UNITED ELECTRIC COOP., INC.
INTERSTATE 80 & RT. 255
DUBOIS, PA. 15801
814-371-8570

Now after diligent search and inquiry failed to find the
within within my bailiwick.

Sworn and subscribed before me _____
this _____

Notary public _____

Deputy Sheriff _____
PRINT NAME _____

Sheriff _____

SIGNED, NOTARIZED RETURN FILED AT BUTLER PROTHONOTARY'S OFFICE.

ATTORNEY JOHN W.MURTAGH, JR., ESQ. 110S WINDERMAN RD. WEXFORD, PA. 15090. 724-935-7555	Writ SurCharge Notary Service Copies NEI Post CERT.MAIL Mileage Total	\$9.00 \$20.00 \$29.00	12/20/02 IND: \$45.00 CK# 1623 JOHN W.MURTAGH, JR., ESQ.
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COMPLAINT IN CIVIL ACTION, NOTICE TO DEFEND, COUNTS & VERIFICATION

REC'D 12/20/02
 ORIGIN BUTLER CASE# 2002-11333

FILED: 12/20/02 LDTS: 01/19/03

PLAINTIFF
 CRAIG W. DEBOWER

DEFENDANT
 UNITED ELECTRIC COOPERATIVE, INC.
 STEPHEN A. MARSHALL

DEPUTIZE CLEARFIELD CO. ON 12/20/02
 SERVE:

UNITED ELECTRIC COOPERATIVE, INC.
 INTERSTATE 80 & RT. 255
 DUBOIS, PA. 15801
 814-371-8570

03-15-03 RECEIVED FAX FROM CLEARFIELD COUNTY. 01-06-03 AT 11:20 AM DEPUTY RYEN COUDRIET SERVED THE DEFENDANT UNITED ELECTRIC COOPERATIVE INC. BY SERVING DAWN, CUSTOMER SERVICE AT THE PLACE OF BUSINESS INTERSTATE 80 & RT 255 DUBOIS PA 15801.

STEPHEN A. MARSHALL
 RD. 1
 LUTERSBURG, PA. 15848
 OR C/O UNITED ELECTRIC COOP., INC.
 INTERSTATE 80 & RT. 255
 DUBOIS, PA. 15801
 814-371-8570

03-15-03 RECEIVED FAX FROM CLEARFIELD COUNTY. 01-06-03 AT 11:20 AM DEPUTY RYEN COUDRIET SERVED THE DEFENDANT STEPHEN A MARSHALL BY SERVING DAWN HAWKINS, CUSTOMER SERVICE AT HIS PLACE OF BUSINESS UNITED ELECTRIC CORP, INTERSTATE 80 & RT 255 DUBOIS PA 15801.

SO ANSWERS:

DENNIS C. RICKARD, SHERIFF, COUNTY OF BUTLER

✓ PQ 3-21-03
 Cost Acct # 1648
 \$24.00

ATTORNEY JOHN W. MURTAGH, JR., ESQ. 110 S WINDERMAN RD. WEXFORD, PA. 15090 724-935-7555	Writ SurCharge Notary Service Copies NEI Post CERT MAIL Mileage DEPUTIZED CLEARFIELD CO.	\$9.00 \$20.00 \$0.00 \$15.00 \$10.00 \$0.00 \$0.00 \$0.00 \$6.00 \$9.00	12/20/02 IND: \$45.00 CK# 1623 JOHN W. MURTAGH, JR., ESQ.
	Total	\$69.00	BILLED ATTORNEY \$ 24.00 ON 03/17/03 PLEASE SUBMIT PAYMENT IMMEDIATELY SO WE CAN SATISFY WITH PROTHONOTARY.

RECEIPT FOR PAYMENT

=====

Butler County Prothonotary's Office
 P.O. Box 1208
 Butler, Pa 16003-1208

Receipt Date 12/20/2002
 Receipt Time 8:46:41
 Receipt No. 126046

CRAIG W DEBOWER (VS) UNITED ELECTRIC COOPERATIVE

Case Number 2002-11333

Received of JOHN W MURTAGH JR

Total Check...	+	94.50	Check No. 1622
Total Cash....	+	.00	
Change.....	-	.00	

Receipt total. = 94.50

----- Distribution Of Payment -----
 Transaction Description Payment Amount

COMPLAINT FILED	79.00	BUTLER COUNTY GENERAL FUND
TAX ON CMPLT	.50	BUREAU OF RECEIPTS & CNTR.M.D.
PRO AUTOMATION	5.00	BUTLER CO GEN FUND AUTOMATION
JCS/ATJ	10.00	BUREAU OF RECEIPTS & CNTR.M.D.

Comp filed 12-20-02
 To Butler Sheriff 12-20-02

Clearfield Sheriff
 814-765-2641 x 5986

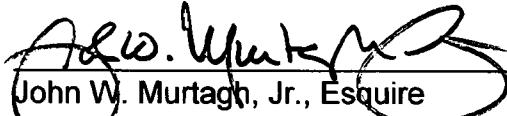
39.9
 Please
 2 hrs - filing

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of December, 2004 a true and correct copy of the within Praeclipe to Settle, Discontinue and End, was served upon Defendants' counsel of record, by United States Mail, First Class, postage prepaid to:

Craig A. Markham, Esquire
Elderkin Martin Kelly Messina
Jones School Square
150 East Eighth Street
Erie, PA 16501

Respectfully Submitted,


John W. Murtagh, Jr., Esquire
Pa. Id. No. 16726
Murtagh & Cahill
110 Swinderman Road
Wexford, PA 15090
(724) 935-7555

Counsel for Plaintiff
Craig W. DeBower

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Copy

Craig W. DeBower

Vs.
United Electric Cooperative, Inc.
Stephen A. Marshall

No. 2003-00583-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on December 23, 2004, marked:

Settled, Discontinued and Ended with Prejudice

Record costs in the sum of \$70.00 have been paid in full by Craig A. Markham, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 23rd day of December A.D. 2004.

William A. Shaw, Prothonotary