

03-762-CD
E.T.R. ENTERPRISES, INC. vs. CLEAN EARTH DREDGING TECH.

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

E.T.R. ENTERPRISES, INC.,
Plaintiff

*

-vs-

*

Docket No. 03-762 -CD

CLEAN EARTH DREDGING
TECHNOLOGIES, INC.,
Defendant

*

Type of pleading:
COMPLAINT

Filed on behalf of:
PLAINTIFF, E.T.R.
Enterprises, Inc.

Counsel of record for
this party:

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED

MAY 20 2003

William A. Shaw
Prothonotary

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

*
E.T.R. ENTERPRISES, INC., *
Plaintiff *

-vs- * Docket No. 03- -CD

CLEAN EARTH DREDGING *
TECHNOLOGIES, INC., *
Defendant *

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 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 within twenty (20) days. 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 relief claimed in the complaint by the plaintiff.

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

DAVID S. MEHOLICK, COURT ADMINISTRATOR
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

*
E.T.R. ENTERPRISES, INC., *
Plaintiff *

-vs- * Docket No. 03- -CD

CLEAN EARTH DREDGING *
TECHNOLOGIES, INC. *
Defendant *

COMPLAINT

COMES NOW, Plaintiff E.T.R. Enterprises, Inc., by and
through its attorney, Dwight L. Koerber, Jr., Esquire, and files
the within Complaint against Defendant Clean Earth Dredging
Technologies, Inc. In support thereof, plaintiff avers and shows
as follows:

1. Plaintiff is E.T.R. Enterprises, Inc., a Pennsylvania
corporation with its principal place of business at 850 Leonard
Street, Clearfield, PA 16830.
2. Defendant is Clean Earth Dredging Technologies, Inc.,
believed to be a Pennsylvania corporation with its principal
place of business at 2337 North Penn Road, Suite 100, Hatfield,
PA 19440.
3. At defendant's request, plaintiff has furnished and
supplied certain volumes of fly ash that are used at defendant's
operations in Bark Camp, Huston Township, Clearfield County,
Pennsylvania.

4. Under the arrangement between the parties, upon delivery of the fly ash, defendant is required to make payment to plaintiff at its facilities in Clearfield, Pennsylvania.

5. From time-to-time, plaintiff has furnished certain materials and services to defendant, and payment has been made, with there being an ongoing account that has been established.

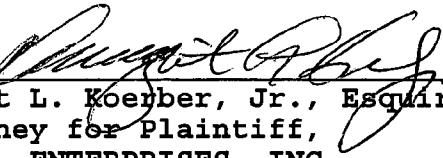
6. The terms of the sales agreement between plaintiff and defendant calls for 18% interest to be paid on all unpaid balances. All of the underlying transactions herein are subject to the same terms and conditions under which 18% interest per annum is charged.

7. Attached hereto as Appendix A is a print out showing the latest amount, with a balance of \$11,234.01 which defendant owes to plaintiff.

8. In view of the fact that the terms of the transaction between the parties specify that interest at the rate of 18% per annum shall apply on unpaid balances, plaintiff seeks to have judgment entered in its favor allowing 18% interest per annum on the unpaid balance and 18% continuing after the entry of a judgment.

WHEREFORE, plaintiff prays that judgment be entered in its favor and against defendant in the amount of \$11,234.01, plus 18% interest and costs.

Respectfully submitted,

By: 
Dwight L. Koerber, Jr., Esquire
Attorney for Plaintiff,
E.T.R. ENTERPRISES, INC.

VERIFICATION

I verify that the statements made in this document 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.



Ernest T. Rosselli
DATE: 5/13/03

APPENDIX A

Attached hereto is a true and correct copy of the invoice showing the amount owed by defendant to plaintiff.

FROM : ETR ENTERPRISE, INC.

PHONE NO. : 8147687452

May. 14 2003 12:20PM P2

850 Leonard Street
Clearfield, PA 16830



E & L BROKERAGE, INC.

814/768-7452
814/768-7491 Fax

May 12, 2003

**CEDT, INC
2337 N. PENN RD
SUITE 100
HATFIELD, PA 19440**

ATTN: KEN SYKES & SCOTT NEWMAN

STATEMENT

FOR PAST DUE PINEY ASH DELIVERED TO BARK CAMP

OUTSTANDING BALANCE.....	\$ 11,067.99
APRIL INTEREST CHARGE AT 1.5%.....	\$ 166.02
TOTAL	\$ 11,234.01

NET 10 DAYS

1.5% INTEREST/MONTH CHARGED ON PAST DUE INVOICES

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
Docket No. 03-
-CD

E.T.R. ENTERPRISES, INC.,
Plaintiff

-vs-

CLEAN EARTH DREDGING TECHNOLOGIES,
INC.,
Defendant

COMPLAINT

01/25/84
4 CC
Attn Koerber
Atty pd. \$5.00

Law Office

DWIGHT L. KOERBER, JR.

ATTORNEY - AT - LAW
110 NORTH SECOND STREET
P. O. Box 1320
CLEARFIELD, PENNSYLVANIA 16830

In The Court of Common Pleas of Clearfield County, Pennsylvania

E.T.R. ENTERPRISES, INC.

VS.

CLEAN EARTH DREDGING TECHNOLOGIES, INC.

COMPLAINT

Sheriff Docket # 14088

03-762-CD

SHERIFF RETURNS

NOW MAY 21, 2003 JOHN DURANTE, SHERIFF OF MONTGOMERY COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON CLEAN EARTH DREDGING TECHNOLOGIES INC., DEFENDANT.

NOW MAY 28, 2003 SERVED THE WITHIN COMPLAINT ON CLEAN EARTH DREDGING TECHNOLOGIES INC, DEFENDANT BY DEPUTIZING THE SHERIFF OF MONTGOMERY COUNTY. THE RETURN OF SHERIFF DURANTE IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED DANIEL MORROW, P.I.C.

Return Costs

Cost	Description
27.97	SHERIFF HAWKINS PAID BY: ATTY CK# 1460
10.00	SURCHARGE PAID BY: ATTY CK# 1461
33.00	MONTGOMERY CO. SHFF. PAID BY: ATTY.

Sworn to Before Me This

10 Day Of June 2003
William A. Shaw

So Answers,

*Chester A. Hawkins
by Marilyn Harr*
Chester A. Hawkins
Sheriff

FILED
O 1:45 PM
JUN 10 2003

William A. Shaw
Prothonotary

SHERIFF'S RETURN

PROTHONOTARY Z- 2348

DEFENDANT: Clean Earth Dredging Technologies Inc.

DOCUMENT SERVED: Civil

INDIVIDUAL SERVED: Daniel Morrow

RELATIONSHIP TO DEFENDANT: Person In Charge

DATE AND PREVAILING TIME: May 28, 2003 @ 13:30

LOCATION: 2337 North Penn Road, Suite 100, Hatfield, PA

The above document was served on the defendant as per information listed above in the County of Montgomery, Commonwealth of Pennsylvania.

Affirmed and subscribed before me on this day so answers.

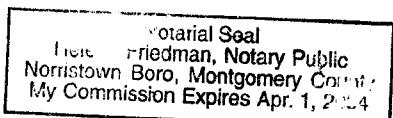
May 29, 2003

Notary Public

Helene Friedman

John P. Durante
Sheriff of Montgomery County

Deputy Sheriff
Zappala





5/18
19

Sheriff's Office Clearfield County

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915

CHESTER A. HAWKINS
SHERIFF

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

ROBERT SNYDER
CHIEF DEPUTY

MARILYN HAMM
DEPT. CLERK

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Pg. 14088

E.T.R. ENTERPRISES INC

TERM & NO. 03-76-CD

VS

DOCUMENT TO BE SERVED:

CLEAN EARTH DREDGING TECHNOLOGIES INC.

COMPLAINT

SERVE BY: 06/19/2003

03 MAY 27 AM 9:20
SHERIFF'S DEPT.

MAKE REFUND PAYABLE TO:

DWIGHT L. KOERBER, JR., ATTY.

SERVE: CLEAN EARTH DREDGING TECHNOLOGIES INC.

ADDRESS: 2337 NORTH PENN ROAD, SUITE 100, HATFIELD, PA. 19440

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of Daniel Morrow
CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF OF
MONTGOMERY COUNTY, Pennsylvania to execute this with this RELATION / POSITION PIC
Deputation being made at the request and risk of the Plaintiff this 21st Day of
MAY 2003

PLACE OF SERVICE 93 Given

Respectfully, TIME OF SERVICE 1330

DATE OF SERVICE 5-28-03

CHESTER A. HAWKINS, NUMBER OF ATTEMPTS 1
SHERIFF OF CLEARFIELD COUNTY

DEPUTY Zappala

DEPUTY Zappala

LAST DAY OF SERVICE 6-19-03

22348

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

E.T.R. ENTERPRISES, INC.	:	
	:	DOCKET NUMBER
Plaintiff	:	03-762-CD
	:	
v.	:	
	:	
CLEAN EARTH DREDGING	:	
TECHNOLOGIES, INC.,	:	
	:	
Defendant	:	

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance on behalf of the Defendant in this matter, Clean Earth
Dredging Technologies, Inc.

Thank you.

Respectfully submitted,



Dated: 6-11-03

Martin Joe Bolstein
Pa. I.D. Number 50159
FOX ROTHSCHILD LLP
102 North Main Street
P.O. Box 1589
Doylestown, PA 18901
(215) 345-7500 (phone)
(215) 345-7507 (fax)

Attorney for Clean Earth Dredging
Technologies, Inc.

FILED

JUN 13 2003

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2003 I caused a copy of the foregoing Entry of Appearance to be served upon the individual listed below via facsimile and certified mail, return receipt requested.

Dwight L. Koerber, Jr., Esquire
110 North Second Street
P.O. Box 1320
Clearfield, PA 16830

Attorney for Plaintiff



Martin Joel Bolstein

FILED

NO
cc

12:50 PM
JUN 13 2003

William A. Shaw
Prothonotary

FOX ROTHSCHILD LLP

By: M. Joel Bolstein/Adam G. Silverstein
Attorney I.D. No. 50159/70201
102 North Main Street, P. O. Box 1589
Doylestown, PA 18901-0700

Attorneys for Defendant

E.T.R. ENTERPRISES, INC.,	:	COURT OF COMMON PLEAS OF
Plaintiff,	:	CLEARFIELD COUNTY, PA
vs.	:	
	:	DOCKET NO. 03-762-CD
CLEAN EARTH DREDGING	:	
TECHNOLOGIES, INC.,	:	
Defendant.	:	

PRAECIPE TO ATTACH VERIFICATION

TO THE PROTHONOTARY:

Kindly attach the Verification of Steven Sands to Defendant Clean Earth Dredging Technologies, Inc.'s Preliminary Objections to Plaintiff's Complaint which was filed with the Court on July 14, 2003.

FOX ROTHSCHILD LLP

By: 

M. Joel Bolstein, Esquire
Adam G. Silverstein, Esquire
Attorneys for Defendant,
Clean Earth Dredging Technologies, Inc.

Dated: 7/15/03

FILED

JUL 16 2003

William A. Shaw
Prothonotary

VERIFICATION

I, Steven Sands, verify that the statements made in the foregoing Preliminary Objections are true and correct to the best of my knowledge, information and belief, and that I am authorized to take this verification on behalf of Clean Earth Dredging Technologies, Inc. I understand that the statements made therein are made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.



Steven Sands

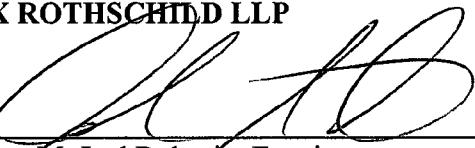
Dated: 7/11, 2003

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have this date served a copy of the Praeclipe to Attach the Verification of Steven Sands to the copy of Defendant's Preliminary Objections to Plaintiff's Complaint which was filed on July 14, 2003 on the following party by first class mail, postage prepaid, addressed as follows:

Dwight L. Koerber, Jr., Esquire
110 N. 2nd Street
Clearfield, PA 16830

FOX ROTHSCHILD LLP

By: 

M. Joel Bolstein, Esquire
Adam G. Silverstein, Esquire
Attorneys for Defendant,
Clean Earth Dredging Technologies, Inc.

Date: 7/15/03

FILED NO
M 11:58 AM
JUL 16 2003
SAC

William A. Shaw
Prothonotary

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

E.T.R. Enterprises, Inc.,
Plaintiff

*

-vs-

*

Docket No. 03-762-CD

Clean Earth Dredging Technologies, Inc.,
Defendant

*

*

Type of Pleading:
Praecipe to Settle, Discontinue and
End with Prejudice

Filed on Behalf of:
Plaintiff:
E.T.R. Enterprises, Inc.

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.
Pa. I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED

SEP 11 2003

William A. Shaw
Prothonotary/Clerk of Courts

FOX ROTHSCHILD LLP
By: M. Joel Bolstein, Esquire
Attorney I.D. No. 50159
102 North Main Street, P. O. Box 1589
Doylestown, PA 18901-0700

Attorneys for Defendant

E.T.R. ENTERPRISES, INC.,
Plaintiff,

: COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PA

vs.

: DOCKET NO. 03-762-CD

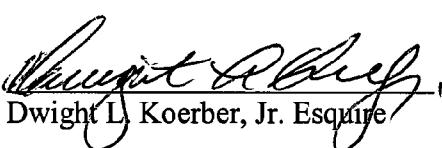
CLEAN EARTH DREDGING
TECHNOLOGIES, INC.,
Defendant.

:
:
:
:

PRAECIPE TO SETTLE, DISCONTINUE & END

TO THE PROTHONOTARY:

Please mark this matter **SETTLED, DISCONTINUED & ENDED WITH PREJUDICE**, upon payment of your costs only.


Dwight L. Koerber, Jr. Esquire

Attorney for E.T.R. Enterprises, Inc.


M. Joel Bolstein, Esquire

Attorneys for Clean Earth Dredging
Technologies, Inc.

Dated: 9/10, 2003

Dated: 9/9, 2003

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
DOCKET NO: 03-762-CD

E.T.R. Enterprises, Inc.

-vs-

Clean Earth Dredging Technologies,
Inc.

PRAECIPE TO SETTLE, DISCONTINUE
AND END WITH PREJUDICE

FILED
OCT 3, 2003
SEP 1 2003
5 CIV.
William A. Shaw
Prothonotary/Clerk of Courts

Copy to c/4
William A. Koerber

LAW OFFICE

DWIGHT KOERBER, JR.
ATTORNEY-AT-LAW
110 NORTH SECOND STREET
P. O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

E. T. R. Enterprises, Inc.

Vs.

No. 2003-00762-CD

Clean Earth Dredging Technologies, Inc.

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on September 11, 2003, marked:

Settled, Discontinued & Ended with Prejudice

Record costs in the sum of \$85.00 have been paid in full by Dwight L. Koerber, Jr., Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 11th day of September A.D. 2003.

William A. Shaw, Prothonotary

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

E.T.R. Enterprises, Inc.,
Plaintiff

*

-vs-

* Docket No. 03-762-CD

Clean Earth Dredging Technologies, Inc.,
Defendant

*

Type of Pleading:
Certificate of Service

Filed on Behalf of:
Plaintiff:
E.T.R. Enterprises, Inc.

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.
Pa. I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED

SEP 11 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

E.T.R. Enterprises, Inc.,
Plaintiff

*

-vs-

*

Docket No. 03-762-CD

*

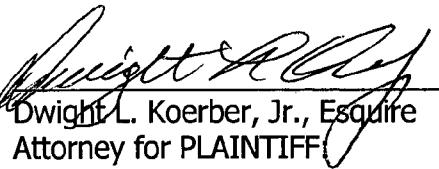
Clean Earth Dredging Technologies, Inc.,
Defendant

*

CERTIFICATE OF SERVICE

This is to certify that on the 11th day of September, 2003, the undersigned served a true and correct copy of the Praeclipe to Settle, Discontinue and End with Prejudice in the above captioned matter upon counsel for Defendant. Such documents were served via United States First Class Mail upon the following:

Martin Joel Bolstein, Esquire
FOX Rothschild, LLP
102 North Main Street
P.O. Box 1589
Doylestown, PA 18901


Dwight L. Koerber, Jr., Esquire
Attorney for PLAINTIFF
E.T.R. Enterprises

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
DOCKET NO: 03-762-CD

E.T.R. Enterprises, Inc.

-vs-

Clean Earth Dredging Technologies,
Inc.

CERTIFICATE OF SERVICE

FILED 5cc
SEP 13 2003 AM
Dwight Koerber
William A. Saylor
Prothonotary/Clerk of Courts

LAW OFFICE

DWIGHT KOERBER, JR.
ATTORNEY-AT-LAW
110 NORTH SECOND STREET
P. O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830

FOX ROTHSCHILD LLP

BY: M. Joel Bolstein, Adam G. Silverstein
IDENTIFICATION NOS. 50159, 70201
102 NORTH MAIN STREET, P.O. BOX 1589
DOYLESTOWN, PA 18901-0700
(215)345-7500

ATTORNEYS FOR DEFENDANT

E.T.R. ENTERPRISES, INC.

COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA

Plaintiff

DOCKET NO. 03-762-CD

v.

CLEAN EARTH DREDGING
TECHNOLOGIES, INC.

Defendant

ORDER

AND NOW, this _____ day of _____, 2003, upon consideration of Defendant, Clean Earth Dredging Technologies, Inc.'s preliminary objections in the nature of a demurrer, and any response thereto, it is hereby ORDERED AND DECREED that said preliminary objection is SUSTAINED and Plaintiff's Complaint is hereby DISMISSED WITH PREJUDICE.

BY THE COURT:

J.

FOX ROTHSCHILD LLP

BY: M. Joel Bolstein, Adam G. Silverstein
IDENTIFICATION NOS. 50159, 70201
102 NORTH MAIN STREET, P.O. BOX 1589
DOYLESTOWN, PA 18901-0700
(215)345-7500

ATTORNEYS FOR DEFENDANT

E.T.R. ENTERPRISES, INC.

COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA

Plaintiff

DOCKET NO. 03-762-CD

v.

CLEAN EARTH DREDGING
TECHNOLOGIES, INC.

Defendant

ORDER

AND NOW, this _____ day of _____, 2003, upon consideration of Defendant, Clean Earth Dredging Technologies, Inc.'s preliminary objections in the nature of a motion for a more specific pleading, and any response thereto, it is hereby ORDERED AND DECREED that said preliminary objection is SUSTAINED.

IT IS FURTHER ORDERED that Plaintiff, E.T.R. Enterprises, Inc., shall file an amended Complaint within twenty (20) days from the date of this Order setting forth the specific terms of the alleged, implied or constructive or oral contract entered into between the parties.

BY THE COURT:

J.

FOX ROTHSCHILD LLP

BY: M. Joel Bolstein, Adam G. Silverstein
IDENTIFICATION NOS. 50159, 70201
102 NORTH MAIN STREET, P.O. BOX 1589
DOYLESTOWN, PA 18901-0700
(215)345-7500

ATTORNEYS FOR DEFENDANT

E.T.R. ENTERPRISES, INC.

COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA

Plaintiff

DOCKET NO. 03-762-CD

v.

CLEAN EARTH DREDGING
TECHNOLOGIES, INC.

Defendant

FILED

JUL 14 2003

William A. Shaw
Prothonotary

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

Clean Earth Dredging Technologies, Inc., by its undersigned counsel, Fox Rothschild LLP, hereby asserts the following Preliminary Objections to the Complaint filed by Plaintiff, E.T.R. Enterprises, Inc.

1. On or about May 20, 2003, Plaintiff, E.T.R. Enterprises, Inc. ("E.T.R.") filed a complaint against defendant Clean Earth Dredging Technologies, Inc. ("Clean Earth").
2. In the Complaint, E.T.R. appears to be asserting a claim for breach of contract in the amount of \$11,234.01, arising from an alleged agreement whereby E.T.R. was to supply fly ash to Clean Earth. See Complaint, ¶3.

3. In ¶6 of the Complaint, E.T.R. appears to assert that there is a sales agreement existing between E.T.R. and Clean Earth. It is unknown whether E.T.R. is asserting that this is a written or oral agreement.

COUNT I

PRELIMINARY OBJECTION – DEMURRER

4. Clean Earth incorporates by reference the averments in paragraphs 1 through 3 as if set forth at length herein.

5. E.T.R.’s Complaint appears to set forth a claim for breach of contract.

6. In support of its claim, E.T.R. has appended as Exhibit “A” an alleged statement for product provided to Clean Earth.

7. However, the statement appended as Exhibit “A” identifies two parties, neither of which is E.T.R.

8. Listed on the statement is E&L Brokerage, Inc., which is not a party to this litigation.

9. If an agreement exists between E&L Brokerage, Inc. and Clean Earth, it has not been alleged in this Complaint, nor has E.T.R. alleged it has any authority to pursue a claim on behalf of E&L Brokerage, Inc.

10. E.T.R. has failed to state a claim against Clean Earth upon which relief can be granted.

WHEREFORE, Defendant, Clean Earth Dredging Technologies, Inc., respectfully requests that this Court sustain its preliminary objection and dismiss with prejudice Plaintiff’s Complaint.

COUNT II

PRELIMINARY OBJECTION – FAILURE TO CONFORM TO LAW OR RULE OF COURT

11. Clean Earth incorporates by reference the averments in paragraphs 1 through 10 as if set forth at length herein.

12. E.T.R. seeks judgment against Clean Earth arising from an alleged sales agreement pursuant to which it was to supply fly ash to Clean Earth. See Complaint, ¶6.

13. Pa. R. Civ. P. 1019(i) mandates that when a claim or defense is based upon a writing, the pleader shall attach a copy of the writing to the pleading.

14. If this is a written agreement being alleged by E.T.R., than E.T.R. has failed to attach copies of the sales agreement as alleged in ¶6 of its Complaint.

15. E.T.R.'s Complaint is in violation of Pa. R. Civ. P. 1019(i).

WHEREFORE, Clean Earth Dredging Technologies, Inc., respectfully requests that this Court sustain its Preliminary Objection and E.T.R. Enterprises, Inc. be required to file an Amended Complaint in compliance with the rules of civil procedure.

COUNT III

PRELIMINARY OBJECTION – DEMURRER

16. Clean Earth incorporates by reference the averments in paragraphs 1 through 15 as if set forth at length herein.

17. To the extent Plaintiff's Complaint is seeking to assert a claim for breach of an oral, implied or constructive agreement, E.T.R. has failed to set forth a claim upon which relief can be granted.

18. In order to set forth a valid claim for breach of an oral agreement, a party must allege the essential terms of the contract. See Kaplan v. Fellheimer, 5 F. Supp. 199 (E.D. Pa. 1998), citing Brader v. Allegheny General Hospital, 64 F.2d 869, 878 (3d Cir. 1995).

19. E.T.R. has failed to specifically identify the essential terms of the alleged oral, implied or constructive contract that arose between the parties as required by Pa. R. Civ. P. 1019(a).

20. Conclusory allegations that the parties entered into an implied, constructive or oral contract do not suffice to state a claim for breach of contract.

21. E.T.R. has failed to state a valid cause of action for breach of an implied, constructive or oral contract under Pennsylvania law.

WHEREFORE, Defendant, Clean Earth Dredging Technologies, Inc. respectfully requests that this Court sustain its preliminary objection and dismiss Plaintiff's Complaint with prejudice.

COUNT IV

PRELIMINARY OBJECTION – MOTION FOR MORE SPECIFIC PLEADING

22. Clean Earth incorporates by reference the averments in paragraphs 1 through 21 as if set forth at length herein.

23. E.T.R. may be asserting that the parties entered into an implied, constructive or oral contract by the terms of which Clean Earth became obligated to pay E.T.R. for fly ash.

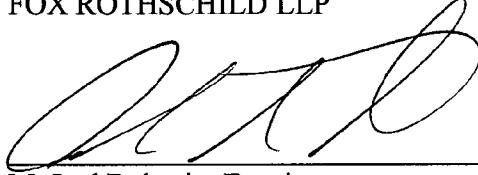
24. E.T.R. has failed to identify any of the essential terms of the alleged implied, constructive or oral contract entered into between the parties.

25. Clean Earth cannot reasonably be expected to prepare an adequate answer to the allegations contained in the Complaint because the allegations are non-specific as to the essential terms of the alleged contracts.

26. Pennsylvania Rule of Civil Procedure 1019(a) requires a complaint to set forth the material facts on which a cause of action or defense is based in concise and summary form, so as to provide the adverse party with enough facts to enable him to frame a proper answer and prepare a defense. See Pa. R. Civ. P. 1019(a); Com., Ex Rel. Milk Marketing Board v. Sunnybrook Dairies, 378 A. 2d 765, 768 (Pa. Cmwlth. 1977).

WHEREFORE, Defendant, Clean Earth Dredging Technologies, Inc. respectfully requests that this Court sustain its preliminary objection and order E.T.R. to file a more specific pleading as to the terms of the alleged implied, constructive or oral contract entered into between the parties.

FOX ROTHSCHILD LLP



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Attorneys for Clean Earth Dredging Technologies, Inc.

Dated: July 11, 2003

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E.T.R. ENTERPRISES, INC.	:	COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
Plaintiff	:	
v.	:	DOCKET NO. 03-762-CD
CLEAN EARTH DREDGING TECHNOLOGIES, INC.	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have this 1st day of July, 2003, served a copy of Defendant's Preliminary Objections to Plaintiff's Complaint on the following party by first class mail, postage prepaid, addressed as follows:

Dwight L. Koerber, Jr., Esquire
110 N. 2nd Street
Clearfield, PA 18630

FOX ROTHSCHILD LLP

By:

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Attorneys for Defendant

COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION NO. 03-762-CD

E.T.R. ENTERPRISES, INC.,
Plaintiff,

v.

CLEAN EARTH DREDGING
TECHNOLOGIES, INC.,
Defendant.

PRELIMINARY OBJECTIONS TO
PLAINTIFF'S COMPLAINT

AP
m 10:44 AM
JUL 14 2003
HCA

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