

03-1078-CD
RUSSELL S. TICE, etal, vs. RICK BERNDT. etal

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

RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
JOSH BERNDT,
T/D/B/A R&B CONTRACTING,
Defendants.

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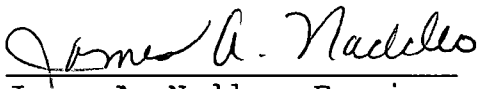
No. 03 - 1078 - CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Default in the above-captioned action was served on the following person and in the following manner on the 4th day of September, 2003:

First-Class Mail, Postage Prepaid

Brian S. Kane, Esquire
DAPPER, BALDASARE, BENSON & KANE, PC
Three Gateway Center, Suite 1375
401 Liberty Avenue
Pittsburgh, PA 15222


James A. Naddeo, Esquire
Attorney for Plaintiffs

FILED 'cc
0/10:45
SEP 18 2003
Atty Naddeo
William A. Shaw
Prothonotary/Clerk of Courts

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

RUSSELL S. TICE and
ELAINE R. TICE,
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RICK BERNDT and
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T/D/A/B R&B CONTRACTING,
Defendants.

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No. 03 - 1078 - CD

NOTICE

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

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

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURT HOUSE
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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RUSSELL S. TICE and
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Plaintiffs,

v.

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JOSH BERNDT,
T/D/A/B R&B CONTRACTING,
Defendants.

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No. 03 - 1078 - CD

AMENDED COMPLAINT

NOW COME the Plaintiffs, Russell S. Tice and Elaine R. Tice, and by their attorney, James A. Naddeo, Esquire, set forth the following:

1. That the Plaintiffs are Russell S. Tice and Elaine R. Tice, husband and wife, who reside at 515 Martin's Road, Houtzdale, Pennsylvania 16651.

2. That the Defendant, Rick Berndt, is an adult individual who resides at Ramey, Pennsylvania 16671

3. That the Defendant, Josh Berndt, is an adult individual who resides at Ramey, Pennsylvania 16671.

4. That at all times referred to herein, the Defendants, Rick Berndt and Josh Berndt, were trading and doing business at R&B Contracting, of P. O. Box 211, Ramey, Pennsylvania 16671.

5. That at all times referred to herein, the Plaintiffs were the owners of a two-story residential dwelling located at 515 Martin's Road, Houtzdale, Pennsylvania 16651.

COUNT I

Elaine R. Tice v. Rick Berndt and
Josh Berndt, t/d/b/a R&B Contracting

6. That in October of 2000 Plaintiffs entered into an Agreement with the Defendants for the construction of an addition to the premises referred to in Paragraph 5 hereof, said addition was to include a cellar with Bilco door. A copy of said agreement is attached hereto as Exhibit "A".

7. That Defendant's commenced the construction of the addition to the premises described in Paragraph 5 hereof on or about November 2000.

8. That Defendants completed the addition to Plaintiffs' residence as described in Paragraph 4 hereof in December of 2000.

9. That during the course of construction Defendants built a set of wooden steps leading from the Bilco doors to the basement addition constructed by Defendants.

10. That Defendants failed to anchor or otherwise secure the steps leading from the Bilco doors to the basement addition constructed by Defendants.

11. That on August 1, 2001, the Plaintiff, Elaine R. Tice, opened the Bilco doors and stepped onto the first step of the wooden staircase constructed by Defendants at which time said steps collapsed into the basement causing Plaintiff, Elaine R. Tice, to fall nine (9) feet to a concrete floor.

12. That as a direct result of the accident referred to in Paragraph 11 hereof, Plaintiff suffered a severe fracture of the right ankle and permanent physical impairments which impairments have caused her to become totally disabled.

13. That the Defendants were guilty of the following negligence, recklessness and carelessness which was the proximate cause of the accident and the injury received by the Plaintiff, Elaine R. Tice, as follows:

A. Defendants failed to anchor or otherwise secure the wooden staircase constructed by them for access to the basement of Plaintiffs' dwelling.

B. Defendants failed to inform Plaintiff that the wooden staircase constructed by Defendants for access to Plaintiffs' basement was not anchored or otherwise secured.

14. That as a result of the injury described in Paragraph 12 hereof, Plaintiff, Elaine R. Tice, incurred medical expenses to date in the amount of \$27,189.13.

15. That at the time of the accident referred to herein, the Plaintiff, Elaine R. Tice, was employed by the Pennsylvania Department of Public Assistance as an income maintenance caseworker at an annual salary of \$40,000.00 with full benefits including health and accident insurance, life insurance, vacation and retirement benefits.

16. That as a direct result of the injury described in Paragraph 12 hereof, Plaintiff, Elaine R. Tice, is no longer able to perform her duties with the Department of Public Assistance.

17. That as a direct result of the injury described in Paragraph 12 hereof, the Plaintiff, Elaine R. Tice, is unable to perform her usual and necessary household duties including but not limited to general housekeeping, shopping, laundry, etc.

18. That as a direct result of the injury described in Paragraph 12 hereof, Plaintiffs have been required to pay for household services in the amount of \$25.00 per week.

19. That as a direct result of the injury described in Paragraph 12 hereof, the Plaintiff, Elaine R. Tice, is wholly unable to engage in any social activities or hobbies.

20. That Plaintiffs have been required to make structural modifications to their home in order to accommodate the physical impairments incurred by Plaintiff, Elaine R. Tice, as a direct result of the injury described in Paragraph 12

hereof in the amount of \$900.00 to the date of this Complaint and will be required to make additional modifications in the future at a cost which cannot be pre-determined.

21. That Plaintiffs will be required to make physical modifications to their vehicle for hand controls at an estimated cost of \$750.00 to \$1,000.00.

22. That the Plaintiff, Elaine R. Tice, claims a reasonable amount for the following:

A. Pain and suffering; past, present and future;

B. Privation and inconvenience; past, present and future;

C. Impairment of earning power; past, present and future;

D. Future lost wages;

E. Future medical expenses;

F. All other damages allowable by law.

WHEREFORE, the Plaintiff, Elaine R. Tice, claims unliquidated damages in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars. Jury Trial Demanded.

COUNT II

Russell S. Tice v. Rick Berndt and
Josh Berndt, t/d/b/a R&B Contracting

23. That the Plaintiff, Russell S. Tice, incorporates Paragraphs 1 through 22 of this Complaint by reference and makes them a part hereof.


24. That the Plaintiff, Russell S. Tice, is the husband of Elaine R. Tice, having been married to the said Elaine R. Tice on October 16, 1971.

25. That the Plaintiff, Russell S. Tice, has resided with his wife, Elaine R. Tice, since the date of the parties' marriage and continues to reside with her up to and including the time of the filing of this Complaint.

26. That as a result of the injury suffered by the Plaintiff, Elaine R. Tice, the Plaintiff, Russell S. Tice, has been denied the society of his wife and shall continue to be denied her society for an indefinite period of time in the future.

27. That as a result of the injury suffered by the Plaintiff, Elaine R. Tice, the Plaintiff, Russell S. Tice, has incurred medical expenses on behalf of his wife and will be required to incur medical expenses in the future for the treatment of her injury.

WHEREFORE, Plaintiff, Russell S. Tice, claims unliquidated damages in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars. Jury Trial Demanded.


James A. Naddeo
Attorney for Plaintiffs

AUG-21-01 TUE 15:36
08/21/2001 TUE 18:08 FAX 8142386

CURW PANK KMART BRANCH
CSB BANK MAIN OFFICE

FAX NO. 1 814 /65 2885
ART PLAZA

P. 02
002

R & B Contracting over 18 years serving the community

P.O. Box 211
Ramsay, Pa 16671
United States

Phone 378-2374
Fax 378-6628

Proposal Submitted To

Name Russell Tice
Street _____
City Elktonville
State PA
Telephone Number 378-5465

Work To Be Performed At

Street _____
City SAVE State _____
Date of Plans _____
Architect _____

12 x 14 addition containing a bathroom & laundry room, with
all necessary finish work (doors, drywall, insulation etc.)
and approx 7' high cellar w/ bilco door

Replace porch floor w/ pressure treated lumber to
include banister, install new vinyl soffit & aluminium
fascia on ceiling, and 1 bilco door on existing cellarway.

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of

Dollars (\$ 18,500)⁰⁰

With payments to be made as follows:

Payments of \$3,700.00

Comments:

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance upon above work. Workman's Compensation and Public Liability Insurance on above work to be taken out by Dubler's Insurance Agency.

Respectfully Submitted R & B Contracting

Owner/Co-Owner John Beaudt

Note - This proposal may be withdrawn by us if not accepted within **10** days.

COMMONWEALTH OF PENNSYLVANIA)

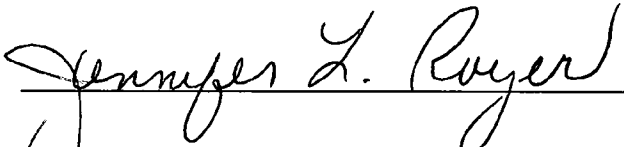

ss.

COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared ELAINE R. TICE, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Amended Complaint are true and correct to the best of her knowledge, information and belief.


Elaine R. Tice

SWORN and SUBSCRIBED before me this 18th day of September, 2003.

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

RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
JOSH BERNDT,
T/D/A/B R&B CONTRACTING,
Defendants.

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No. 03 - 1078 - CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Amended Complaint filed in the above-captioned action was served on the following person and in the following manner on the 18th day of September, 2003:

First-Class Mail, Postage Prepaid

Brian S. Kane, Esquire
Dapper, Baldasare, Benson & Kane, PC
Three Gateway Center, Suite 1375
401 Liberty Avenue
Pittsburgh, PA 15222


James A. Naddeo, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

RUSSEL S. TICE and ELAINE R. TICE,
Husband and wife,

CIVIL DIVISION

No.: 03-1078-CD

Plaintiffs,

v.

RICK BERNDT and JOSH BERNDT,
T/D/A/B R&B CONTRACTING,

Defendants.

Filed on behalf of Defendants
Rick Berndt and Josh Berndt, t/d/a/b
R&B Contracting

Counsel of Record for this Party:

Brian S. Kane
Pa. I.D. # 65715

Dapper, Baldasare, Benson & Kane, P.C.
Three Gateway Center, Suite 1375
401 Liberty Avenue
Pittsburgh, PA 15222

(412) 456-5555

FILED

AUG 28 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

RUSSEL S. TICE and ELAINE R. TICE,
Husband and wife,

CIVIL ACTION

No.: 03-1078-CD

Plaintiffs,

v.

RICK BERNDT and JOSH BERNDT,
T/D/A/B R&B CONTRACTING,

Defendants.

PRAECIPE FOR ENTRY OF APPEARANCE

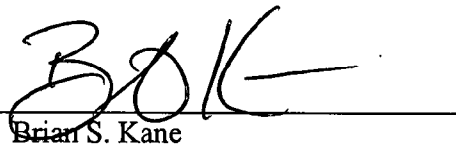
To: The Prothonotary

Please enter our appearance as counsel of record for Defendants, Rick Berndt and Josh Berndt, t/d/a/b R&B Contracting with regard to this matter.

Respectfully submitted,

DAPPER, BALDASARE, BENSON & KANE, P.C.

By: _____


Brian S. Kane

*(Counsel for Defendants
Rick Berndt and Josh Berndt,
t/d/a/b R&B Contracting*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Praeceptum for Entry of Appearance has been forwarded to Plaintiffs' counsel by U.S. Mail, postage prepaid, the 25th day of August, 2003 addressed as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
Marino Building
P.O. Box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

DAPPER, BALDASARE, BENSON & KANE, P.C.

By: _____


Brian S. Kane

FILED

NO

CC

10:29 AM
AUG 28 2003

[Handwritten signature]

William A. Shaw

Prothonotary/Clerk of Courts

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

FILED

SEP 04 2003

0/3:15

William A. Shaw
Prothonotary

1 cc to City


William A. Shaw
Prothonotary

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

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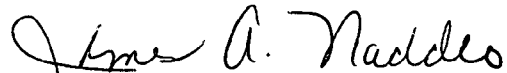
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No. 03 - 1078 - CD

PRAECIPE TO REINSTATE COMPLAINT

TO THE PROTHONOTARY OF CLEARFIELD COUNTY:

Please reinstate the Complaint filed in the above-
captioned case.



James A. Naddeo, Esquire
Attorney for Plaintiffs

FILED

*reinstated complaint
to atty.*

G'D: 31

AUG 12 2003

William A. Shaw
Prothonotary

William A. Shaw
Prothonotary

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

RUSSELL S. TICE and
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COURT ADMINISTRATOR
CLEARFIELD COUNTY COURT HOUSE
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

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Defendants.

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No. 03 - - CD

COMPLAINT

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1. That the Plaintiffs are Russell S. Tice and Elaine R. Tice, husband and wife, who reside at 515 Martin's Road, Houtzdale, Pennsylvania 16651.

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4. That at all times referred to herein, the Defendants, Rick Berndt and Josh Berndt, were trading and doing business at R&B Contracting, of P. O. Box 211, Ramey, Pennsylvania 16671.

5. That at all times referred to herein, the Plaintiffs were the owners of a two-story residential dwelling located at 515 Martin's Road, Houtzdale, Pennsylvania 16651.

COUNT I

Elaine R. Tice v. Rick Berndt and
Josh Berndt, t/d/b/a R&B Contracting

6. That in October of 2000 Plaintiffs entered into an Agreement with the Defendants for the construction of an addition to the premises referred to in Paragraph 5 hereof, said addition was to include a cellar with Bilco door. A copy of said agreement is attached hereto as Exhibit "A".

7. That Defendant's commenced the construction of the addition to the premises described in Paragraph 5 hereof on or about November 2000.

8. That Defendants completed the addition to Plaintiffs' residence as described in Paragraph 4 hereof in December of 2000.

9. That during the course of construction Defendants built a set of wooden steps leading from the Bilco doors to the basement addition constructed by Defendants.

10. That Defendants failed to anchor or otherwise secure the steps leading from the Bilco doors to the basement addition constructed by Defendants.

11. That on August 1, 2001, the Plaintiff, Elaine R. Tice, opened the Bilco doors and stepped onto the first step of the wooden staircase constructed by Defendants at which time said steps collapsed into the basement causing Plaintiff, Elaine R. Tice, to fall nine (9) feet to a concrete floor.

12. That as a direct result of the accident referred to in Paragraph 11 hereof, Plaintiff suffered a severe fracture of the right ankle and permanent physical impairments which impairments have caused her to become totally disabled.

13. That the Defendants were guilty of the following negligence, recklessness and carelessness which was the proximate cause of the accident and the injury received by the Plaintiff, Elaine R. Tice, as follows:

A. Defendants failed to anchor or otherwise secure the wooden staircase constructed by them for access to the basement of Plaintiffs' dwelling.

B. Defendants failed to inform Plaintiff that the wooden staircase constructed by Defendants for access to Plaintiffs' basement was not anchored or otherwise secured.

C. Defendants failed to use due care under all of the circumstances of this case.

14. That as a result of the injury described in Paragraph 12 hereof, Plaintiff, Elaine R. Tice, incurred medical expenses to date in the amount of \$27,189.13.

15. That at the time of the accident referred to herein, the Plaintiff, Elaine R. Tice, was employed by the Pennsylvania Department of Public Assistance as an income maintenance caseworker at an annual salary of \$40,000.00 with full benefits including health and accident insurance, life insurance, vacation and retirement benefits.

16. That as a direct result of the injury described in Paragraph 12 hereof, Plaintiff, Elaine R. Tice, is no longer able to perform her duties with the Department of Public Assistance.

17. That as a direct result of the injury described in Paragraph 12 hereof, the Plaintiff, Elaine R. Tice, is unable to perform her usual and necessary household duties including but not limited to general housekeeping, shopping, laundry, etc.

18. That as a direct result of the injury described in Paragraph 12 hereof, Plaintiffs have been required to pay for household services in the amount of \$25.00 per week.

19. That as a direct result of the injury described in Paragraph 12 hereof, the Plaintiff, Elaine R. Tice, is wholly unable to engage in any social activities or hobbies.

20. That Plaintiffs have been required to make structural modifications to their home in order to accommodate the physical impairments incurred by Plaintiff, Elaine R. Tice, as a direct result of the injury described in Paragraph 12 hereof in the amount of \$900.00 to the date of this Complaint and will be required to make additional modifications in the future at a cost which cannot be pre-determined.

21. That Plaintiffs will be required to make physical modifications to their vehicle for hand controls at an estimated cost of \$750.00 to \$1,000.00.

22. That the Plaintiff, Elaine R. Tice, claims a reasonable amount for the following:

A. Pain and suffering; past, present and future;

B. Privation and inconvenience; past, present and future;

C. Impairment of earning power; past, present and future;

D. Future lost wages;

E. Future medical expenses;

F. All other damages allowable by law.

WHEREFORE, the Plaintiff, Elaine R. Tice, claims unliquidated damages in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars. Jury Trial Demanded.

COUNT II

Russell S. Tice v. Rick Berndt and
Josh Berndt, t/d/b/a R&B Contracting

23. That the Plaintiff, Russell S. Tice, incorporates Paragraphs 1 through 22 of this Complaint by reference and makes them a part hereof.

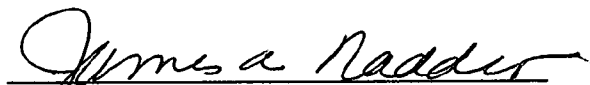
24. That the Plaintiff, Russell S. Tice, is the husband of Elaine R. Tice, having been married to the said Elaine R. Tice on October 16, 1971.

25. That the Plaintiff, Russell S. Tice, has resided with his wife, Elaine R. Tice, since the date of the parties' marriage and continues to reside with her up to and including the time of the filing of this Complaint.

26. That as a result of the injury suffered by the Plaintiff, Elaine R. Tice, the Plaintiff, Russell S. Tice, has been denied the society of his wife and shall continue to be denied her society for an indefinite period of time in the future.


27. That as a result of the injury suffered by the Plaintiff, Elaine R. Tice, the Plaintiff, Russell S. Tice, has incurred medical expenses on behalf of his wife and will be required to incur medical expenses in the future for the treatment of her injury.

WHEREFORE, Plaintiff, Russell S. Tice, claims unliquidated damages in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars. Jury Trial Demanded.


James A. Naddeo
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF CLEARFIELD) ss.

Before me, the undersigned officer, personally appeared ELAINE R. TICE, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Complaint are true and correct to the best of her knowledge, information and belief.


Elaine R. Tice

SWORN and SUBSCRIBED before me this 15th day of July, 2003.



Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2003

AUG-21-01 TUE 15:36
08/21/2001 TUE 16:06 FAX 8142360411

CURW BANK KMART BRANCH
CSB BANK MAIN OFFICE

FAX NO. 1 814 765 2885
--- KMART PLAZA

P. 02
002

R & B Contracting over 10 years serving the community

P.O. Box 211
Ramey, Pa 16671
United States

Phone 378-3334
Fax 378-6621

Proposal Submitted To

Name Russell Tice
Street _____
City Harpsville
State PA
Telephone Number 378-54105

Work To Be Performed At

Street _____
City SAVE State _____
Date of Plans _____
Architect _____

12 x 14 addition containing a bathroom & laundry room with
all necessary finish work (doors, drywall, insulation etc.)
and approx. 7' high cellar w/ bilco door

Replace porch floor w/ pressure treated lumber to
include banister, install new vinyl soffits & aluminium
fascia on ceiling, and 2 bilco door on existing cellarway.

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of:

Dollars (\$ 18,500)⁰⁰

With payments to be made as follows:

Payments of \$3,700.00

Comments:

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by Dubler's Insurance Agency.

Respectfully Submitted R & B Contracting

Owner/Co-Owner John Beaudt

Notes - This proposal may be withdrawn by us if not accepted within 10 days.

Atty pd. 85.00
0/10.47.01
2 CC Sheriff
~~2 CC Sheriff~~

8-12-03
Document
Reinstated/Reissued to Sheriff/Attorney
for service.
C. M. Naddeo
Deputy Prothonotary

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

In The Court of Common Pleas of Clearfield County, Pennsylvania

TICE, RUSSELL S. & ELAINE R.

VS.

Sheriff Docket # 14361

03-1078-CD

BERNDT, RICK & JOSH T/D/B/A R&B CONTRACTING

COMPLAINT

SHERIFF RETURNS

NOW AUGUST 13, 2003 AT 2:07 PM SERVED THE WITHIN COMPLAINT ON JOSH BERNDT t/d/b/a R&B CONTRACTING, DEFENDANT AT (MEETING PLACE) CROSSKEYS, HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JOSH BERNDT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

NOW AUGUST 13, 2003 AT 2:07 PM SERVED THE WITHIN COMPLAINT ON RICK BERNDT t/d/b/a R&B CONTRACTING, DEFENDANT AT RESIDENCE, RAMEY, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO RICK BERNDT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

Return Costs

Cost	Description
143.17	SHERIFF HAWKINS PAID BY: Atty.
20.00	SURCHARGE PAID BY: ATTY CK# 15245

Sworn to Before Me This

23 Day Of Sept 2003
William A. Shaw

So Answers,

Chester A. Hawkins
Cy Mauter Harris
Chester A. Hawkins
Sheriff

FILED

0 1-40 140

SEP 23 2003

William A. Shaw
Prothonotary

Filed
7/24/03

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V.

RICK BERNDT and
JOSH BERNDT,
T/D/A/B R&B CONTRACTING,
Defendants.

8-12-03 Document
 Instated/Released to Sheriff/Attorney
 Service.
 [Signature]
 Deputy Prothonotary

No. 03 - 1078 - CD

[illegible]

Type of Pleading:

COMPLAINT

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

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

AUG 13 2003

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

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

RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
JOSH BERNDT,
T/D/A/B R&B CONTRACTING,
Defendants.

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* No. 03 - - CD
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NOTICE

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

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

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURT HOUSE
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
JOSH BERNDT,
T/D/A/B R&B CONTRACTING,
Defendants.

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No. 03 - - CD

COMPLAINT

NOW COME the Plaintiffs, Russell S. Tice and Elaine R. Tice, and by their attorney, James A. Naddeo, Esquire, set forth the following:

1. That the Plaintiffs are Russell S. Tice and Elaine R. Tice, husband and wife, who reside at 515 Martin's Road, Houtzdale, Pennsylvania 16651.

2. That the Defendant, Rick Berndt, is an adult individual who resides at Ramey, Pennsylvania 16671

3. That the Defendant, Josh Berndt, is an adult individual who resides at Ramey, Pennsylvania 16671.

4. That at all times referred to herein, the Defendants, Rick Berndt and Josh Berndt, were trading and doing business at R&B Contracting, of P. O. Box 211, Ramey, Pennsylvania 16671.

5. That at all times referred to herein, the Plaintiffs were the owners of a two-story residential dwelling located at 515 Martin's Road, Houtzdale, Pennsylvania 16651.

COUNT I

Elaine R. Tice v. Rick Berndt and
Josh Berndt, t/d/b/a R&B Contracting

6. That in October of 2000 Plaintiffs entered into an Agreement with the Defendants for the construction of an addition to the premises referred to in Paragraph 5 hereof, said addition was to include a cellar with Bilco door. A copy of said agreement is attached hereto as Exhibit "A".

7. That Defendant's commenced the construction of the addition to the premises described in Paragraph 5 hereof on or about November 2000.

8. That Defendants completed the addition to Plaintiffs' residence as described in Paragraph 4 hereof in December of 2000.

9. That during the course of construction Defendants built a set of wooden steps leading from the Bilco doors to the basement addition constructed by Defendants.

10. That Defendants failed to anchor or otherwise secure the steps leading from the Bilco doors to the basement addition constructed by Defendants.

11. That on August 1, 2001, the Plaintiff, Elaine R. Tice, opened the Bilco doors and stepped onto the first step of the wooden staircase constructed by Defendants at which time said steps collapsed into the basement causing Plaintiff, Elaine R. Tice, to fall nine (9) feet to a concrete floor.

12. That as a direct result of the accident referred to in Paragraph 11 hereof, Plaintiff suffered a severe fracture of the right ankle and permanent physical impairments which impairments have caused her to become totally disabled.

13. That the Defendants were guilty of the following negligence, recklessness and carelessness which was the proximate cause of the accident and the injury received by the Plaintiff, Elaine R. Tice, as follows:

A. Defendants failed to anchor or otherwise secure the wooden staircase constructed by them for access to the basement of Plaintiffs' dwelling.

B. Defendants failed to inform Plaintiff that the wooden staircase constructed by Defendants for access to Plaintiffs' basement was not anchored or otherwise secured.

C. Defendants failed to use due care under all of the circumstances of this case.

14. That as a result of the injury described in Paragraph 12 hereof, Plaintiff, Elaine R. Tice, incurred medical expenses to date in the amount of \$27,189.13.

15. That at the time of the accident referred to herein, the Plaintiff, Elaine R. Tice, was employed by the Pennsylvania Department of Public Assistance as an income maintenance caseworker at an annual salary of \$40,000.00 with full benefits including health and accident insurance, life insurance, vacation and retirement benefits.

16. That as a direct result of the injury described in Paragraph 12 hereof, Plaintiff, Elaine R. Tice, is no longer able to perform her duties with the Department of Public Assistance.

17. That as a direct result of the injury described in Paragraph 12 hereof, the Plaintiff, Elaine R. Tice, is unable to perform her usual and necessary household duties including but not limited to general housekeeping, shopping, laundry, etc.

18. That as a direct result of the injury described in Paragraph 12 hereof, Plaintiffs have been required to pay for household services in the amount of \$25.00 per week.

19. That as a direct result of the injury described in Paragraph 12 hereof, the Plaintiff, Elaine R. Tice, is wholly unable to engage in any social activities or hobbies.

20. That Plaintiffs have been required to make structural modifications to their home in order to accommodate the physical impairments incurred by Plaintiff, Elaine R. Tice, as a direct result of the injury described in Paragraph 12 hereof in the amount of \$900.00 to the date of this Complaint and will be required to make additional modifications in the future at a cost which cannot be pre-determined.

21. That Plaintiffs will be required to make physical modifications to their vehicle for hand controls at an estimated cost of \$750.00 to \$1,000.00.

22. That the Plaintiff, Elaine R. Tice, claims a reasonable amount for the following:

A. Pain and suffering; past, present and future;

B. Privation and inconvenience; past, present and future;

C. Impairment of earning power; past, present and future;

D. Future lost wages;

E. Future medical expenses;

F. All other damages allowable by law.

WHEREFORE, the Plaintiff, Elaine R. Tice, claims unliquidated damages in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars. Jury Trial Demanded.

COUNT II

Russell S. Tice v. Rick Berndt and
Josh Berndt, t/d/b/a R&B Contracting

23. That the Plaintiff, Russell S. Tice, incorporates Paragraphs 1 through 22 of this Complaint by reference and makes them a part hereof.

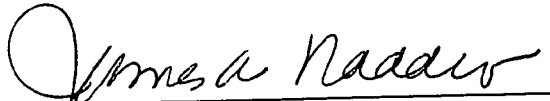
24. That the Plaintiff, Russell S. Tice, is the husband of Elaine R. Tice, having been married to the said Elaine R. Tice on October 16, 1971.

25. That the Plaintiff, Russell S. Tice, has resided with his wife, Elaine R. Tice, since the date of the parties' marriage and continues to reside with her up to and including the time of the filing of this Complaint.

26. That as a result of the injury suffered by the Plaintiff, Elaine R. Tice, the Plaintiff, Russell S. Tice, has been denied the society of his wife and shall continue to be denied her society for an indefinite period of time in the future.

27. That as a result of the injury suffered by the Plaintiff, Elaine R. Tice, the Plaintiff, Russell S. Tice, has incurred medical expenses on behalf of his wife and will be required to incur medical expenses in the future for the treatment of her injury.

WHEREFORE, Plaintiff, Russell S. Tice, claims unliquidated damages in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars. Jury Trial Demanded.


James A. Naddeo
Attorney for Plaintiffs.

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF CLEARFIELD) SS.

Before me, the undersigned officer, personally appeared ELAINE R. TICE, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Complaint are true and correct to the best of her knowledge, information and belief.

SWORN and SUBSCRIBED before me this 15th day of July, 2003.

Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2003

AUG-21-01 TUE 15:36

CURW BANK KMART BRANCH

FAX NO. 1 814 100 2000

11.02

08/21/2001 TUE 18:08 FAX 8142366

CSB BANK MAIN OFFICE

ART PLAZA

002

R & B Contracting over 18 years serving the communityP.O. Box 213
Rambley, Pa 16671
United StatesPhone 378-3374
Fax 378-6628**Proposal Submitted To**Name Russell Tice
Street _____
City Elktonville
State Pa
Telephone Number 378-541a5**Work To Be Performed At**Street _____
City STATE State _____
Date of Plans _____
Architect _____12 x 14 addition containing a bathroom & laundry room with
all necessary finish work (doors, drywall, insulation etc.)
and approx 7' high cellar w/ bilco doorReplace porch floor w/ pressure treated lumber to
include banister, install new vinyl soffit & aluminum
fascia on ceiling, and 1 bilco door on existing cellarway.All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings
and specifications submitted for above work and completed in a substantial workmanlike manner for the sum ofDollars (\$ 18,500)⁰⁰**With payments to be made as follows:**Payments of \$3,700.00**Comments:**Any alteration or deviation from above specifications involving extra costs, will be executed only upon written
orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes,
accidents, or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance upon above
work. Workman's Compensation and Public Liability Insurance on above work to be taken out by Dubler's
Insurance Agency.Respectfully Submitted R & B Contracting

Owner/Co-Owner

John Beaudet

Note - This proposal may be withdrawn by us if not accepted within 10 days.

filed
7/24/13

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No. 03 - 1078 - CD

COMPLAINT

Counsel of Record for
this party:

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

AUG 12 2003

William L. Chan
Prothonotary/
Clerk of Courts

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

RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
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CIVIL DIVISION

RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
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T/D/A/B R&B CONTRACTING,
Defendants.

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COMPLAINT

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3. That the Defendant, Josh Berndt, is an adult individual who resides at Ramey, Pennsylvania 16671.

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COUNT I

Elaine R. Tice v. Rick Berndt and
Josh Berndt, t/d/b/a R&B Contracting

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7. That Defendant's commenced the construction of the addition to the premises described in Paragraph 5 hereof on or about November 2000.

8. That Defendants completed the addition to Plaintiffs' residence as described in Paragraph 4 hereof in December of 2000.

9. That during the course of construction Defendants built a set of wooden steps leading from the Bilco doors to the basement addition constructed by Defendants.

10. That Defendants failed to anchor or otherwise secure the steps leading from the Bilco doors to the basement addition constructed by Defendants.

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21. That Plaintiffs will be required to make physical modifications to their vehicle for hand controls at an estimated cost of \$750.00 to \$1,000.00.

22. That the Plaintiff, Elaine R. Tice, claims a reasonable amount for the following:

A. Pain and suffering; past, present and future;

B. Privation and inconvenience; past, present and future;

C. Impairment of earning power; past, present and future;

D. Future lost wages;

E. Future medical expenses;

F. All other damages allowable by law.

WHEREFORE, the Plaintiff, Elaine R. Tice, claims unliquidated damages in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars. Jury Trial Demanded.

COUNT II

Russell S. Tice v. Rick Berndt and
Josh Berndt, t/d/b/a R&B Contracting

23. That the Plaintiff, Russell S. Tice, incorporates Paragraphs 1 through 22 of this Complaint by reference and makes them a part hereof.

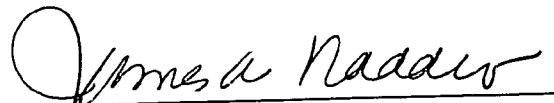
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27. That as a result of the injury suffered by the Plaintiff, Elaine R. Tice, the Plaintiff, Russell S. Tice, has incurred medical expenses on behalf of his wife and will be required to incur medical expenses in the future for the treatment of her injury.

WHEREFORE, Plaintiff, Russell S. Tice, claims
unliquidated damages in an amount in excess of Twenty-Five
Thousand (\$25,000.00) Dollars. Jury Trial Demanded.

A handwritten signature in cursive script, reading "James A. Naddeo", written over a horizontal line.

James A. Naddeo
Attorney for Plaintiffs.

COMMONWEALTH OF PENNSYLVANIA

SS .

COUNTY OF CLEARFIELD

Before me, the undersigned officer, personally appeared

ELAINE R. TICE, who being duly sworn according to law, deposes and

states that the facts set forth in the foregoing Complaint are

true and correct to the best of her knowledge, information and

belief.

Ernie R. Lee

Elaine R. Tice

SWORN and SUBSCRIBED before me this 15th day of July, 2003.

Linda C. Luvie

Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2003

AUG-21-01 TUE 15:36

CURW BANK KMART BRANCH

FAX NO. 1 814 100 2000

1.02

08/21/2001 TUE 15:08 FAX 8142386

CSB BANK MAIN OFFICE

ART PLAZA

002

R & B Contracting over 18 years serving the community

P.O. Box 211
Ramsey, Pa 16671
United States

Phone 378-3344
Fax 378-6628

Proposal Submitted To

Name Russell Tice
Street _____
City Elktonville
State PA
Telephone Number 378-5465

Work To Be Performed At

Street _____
City Elktonville State _____
Date of Plans 10/1/01
Architect _____

12 x 14' addition containing a bathroom + laundry room with
all necessary finish work (doors, drywall, insulation etc.)
and approx. 7' high cellar w/ bilco door

Replace porch floor w/ pressure treated lumber to
include banister, install new vinyl soffit + aluminum
fascia on ceiling, and 1 bilco door on existing cellarway.

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of

Dollars (\$ 18,500)⁰⁰

With payments to be made as follows:

Payments of \$3,700.00

Comments:

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance upon above work. Workman's Compensation and Public Liability Insurance on above work to be taken out by Dabler's Insurance Agency.

Respectfully Submitted R & B Contracting

Owner/Co-Owner

John Beaudt

Note - This proposal may be withdrawn by us if not accepted within **10** days.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

RUSSEL S. TICE and ELAINE R. TICE,
Husband and wife,

CIVIL DIVISION

No.: 03-1078-CD

Plaintiffs,

v.

**ANSWER AND NEW MATTER
TO PLAINTIFFS' AMENDED
COMPLAINT**

RICK BERNDT and JOSH BERNDT,
T/D/A/B R&B CONTRACTING,

Filed on behalf of Defendants
Rick Berndt and Josh Berndt, t/d/a/b
R&B Contracting

Defendants.

Counsel of Record for this Party:

Brian S. Kane
Pa. I.D. # 65715

TO ALL PARTIES:

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

Dapper, Baldasare, Benson & Kane, P.C.
Three Gateway Center, Suite 1375
401 Liberty Avenue
Pittsburgh, PA 15222

(412) 456-5555



Attorney for Defendant

FILED

OCT 01 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

RUSSEL S. TICE and ELAINE R. TICE,
Husband and wife,

CIVIL ACTION

No.: 03-1078-CD

Plaintiffs,

v.

RICK BERNDT and JOSH BERNDT,
T/D/A/B R&B CONTRACTING,

Defendants.

ANSWER AND NEW MATTER TO PLAINTIFFS' AMENDED COMPLAINT

AND NOW, come Defendants, Rick Berndt and Josh Berndt, t/d/a/b R&B Contracting, by and through their attorneys, Dapper, Baldasare, Benson & Kane, P.C., and file the following Answer and New Matter to Plaintiffs' Amended Complaint, averring as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph No. 5; therefore, same are denied and strict proof thereof is demanded at time of trial.

6. Admitted.

7. Admitted.

8. Denied as stated. Defendants believe the addition was completed in March or April.

9. Admitted.

10. The allegations of Paragraph No. 10 of Plaintiffs' Amended Complaint are generally denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

11. After reasonable investigation, Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph No. 11; therefore, same are denied and strict proof thereof is demanded at time of trial.

12. The allegations of Paragraph No. 12 of Plaintiffs' Amended Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations of Paragraph No. 12 are generally denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

13. The allegations of Paragraph No. 13 of Plaintiffs' Amended Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations of Paragraph No. 13 are generally denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

14. The allegations of Paragraph No. 14 of Plaintiffs' Amended Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations of Paragraph No. 14 are generally denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

15. Defendants lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth at Paragraph No. 15; therefore, same are denied and strict proof thereof is demanded at time of trial.

16. The allegations of Paragraph No. 16 of Plaintiffs' Amended Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading

is required, the allegations of Paragraph No. 16 are generally denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

17. The allegations of Paragraph No. 17 of Plaintiffs' Amended Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations of Paragraph No. 17 are generally denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

18. The allegations of Paragraph No. 18 of Plaintiffs' Amended Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations of Paragraph No. 18 are generally denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

19. The allegations of Paragraph No. 19 of Plaintiffs' Amended Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations of Paragraph No. 19 are generally denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

20. Defendants lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth at Paragraph No. 20; therefore, same are denied and strict proof thereof is demanded at time of trial.

21. Defendants lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth at Paragraph No. 21; therefore, same are denied and strict proof thereof is demanded at time of trial.

22. The allegations of Paragraph No. 2 of Plaintiffs' Amended Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading

is required, the allegations of Paragraph No. 22 are generally denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

23. Defendants incorporate by reference hereto Paragraph Nos. 1 through 22 of the Answer as if more fully set forth herein in response to Paragraph No. 23 of Plaintiffs' Amended Complaint.

24. Defendants lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth at Paragraph No. 24; therefore, same are denied and strict proof thereof is demanded at time of trial.

25. Defendants lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth at Paragraph No. 25; therefore, same are denied and strict proof thereof is demanded at time of trial.

26. The allegations of Paragraph No. 26 of Plaintiffs' Amended Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations of Paragraph No. 26 are generally denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

27. The allegations of Paragraph No. 27 of Plaintiffs' Amended Complaint constitute legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations of Paragraph No. 27 are generally denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

WHEREFORE, Defendants, Rick Berndt and Josh Berndt, t/d/b/a R&B Contracting, deny liability to any party under any theory and respectfully request judgment in their favor.

A JURY TRIAL IS DEMANDED

NEW MATTER

28. Plaintiffs' damages, if any, may barred or reduced by her failure to mitigate her damages.

WHEREFORE, Defendants, Rick Berndt and Josh Berndt, t/d/b/a R&B Contracting, deny liability to any party under any theory and respectfully request judgment in their favor.

Respectfully submitted,

DAPPER, BALDASARE, BENSON & KANE, P.C.

By: _____


Brian S. Kane

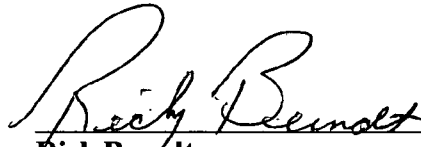
*(Counsel for Defendants
Rick Berndt and Josh Berndt,
t/d/a/b R&B Contracting*

VERIFICATION

I, **RICK BERNDT**, verify that the statements contained in the foregoing **ANSWER AND NEW MATTER TO PLAINTIFFS' AMENDED COMPLAINT** are true and correct to the best of my knowledge, information and belief.

This statement of verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities which provides that if I knowingly make false statements, I may be subject to criminal penalties.

R&B CONTRACTING


Rick Berndt


Dated: 8-26-03

VERIFICATION

I, **JOSH BERNDT**, verify that the statements contained in the foregoing **ANSWER AND NEW MATTER TO PLAINTIFFS' AMENDED COMPLAINT** are true and correct to the best of my knowledge, information and belief.

This statement of verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities which provides that if I knowingly make false statements, I may be subject to criminal penalties.

R&B CONTRACTING



Josh Berndt

Dated: 9-26-03

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Answer and New Matter to Plaintiffs' Amended Complaint has been forwarded to Plaintiffs' counsel by U.S. Mail, postage prepaid, the 29th day of September, 2003 addressed as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
Marino Building
P.O. Box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

DAPPER, BALDASARE, BENSON & KANE, P.C.

By: _____


Brian S. Kane

FILED

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OCT 01 2003

William A. Shaw
Prothonotary

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

RUSSEL S. TICE and ELAINE R. TICE,
Husband and wife,

CIVIL DIVISION

No.: 03-1078-CD

Plaintiffs,

PRELIMINARY OBJECTIONS

v.

RICK BERNDT and JOSH BERNDT,
T/D/A/B R&B CONTRACTING,

Filed on behalf of Defendants
Rick Berndt and Josh Berndt, t/d/a/b
R&B Contracting

Defendants.

Counsel of Record for this Party:

Brian S. Kane
Pa. I.D. # 65715

Dapper, Baldasare, Benson & Kane, P.C.
Three Gateway Center, Suite 1375
401 Liberty Avenue
Pittsburgh, PA 15222

(412) 456-5555

FILED

SEP 08 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

RUSSEL S. TICE and ELAINE R. TICE, CIVIL ACTION
Husband and wife,
No.: 03-1078-CD
Plaintiffs,

v.

RICK BERNDT and JOSH BERNDT,
T/D/A/B R&B CONTRACTING,
Defendants.

PRELIMINARY OBJECTIONS

AND NOW, come Defendants, Rick Berndt and Josh Berndt, t/d/a/b R&B Contracting, by and through their attorneys, Dapper, Baldasare, Benson & Kane, P.C., and file the following Preliminary Objections pursuant to Rule 1028(a)(3), averring as follows:

1. This negligence action involves a claim for damages arising out of an August 1, 2001 fall at Plaintiff's residence.
2. In pleading her cause of action for negligence, Plaintiff avers in Paragraph No. 13(c) of her Complaint that Defendants "failed to use due care under all of the circumstances of this case."
3. Pennsylvania Rule of Civil Procedure 1019 requires pleadings to set forth averments with enough particularity so as to allow the responding party to adequately formulate appropriate responses. See Connor v. Allegheny Gen. Hosp., 461 A.2d 600, 602 n.3 (Pa. 1983).
4. The averment in Paragraph No. 13(c) of Plaintiff's Complaint is insufficient in that it does not concisely state the material facts upon which the averment is based as required by Rule 1019.

5. Defendants cannot appropriately or sufficiently respond to the general allegation set forth in Paragraph No. 13(c) of Plaintiff's Complaint.

6. Based on the foregoing, Paragraph No. 13(c) of Plaintiff's Complaint should be stricken for insufficient specificity.

WHEREFORE, Defendants, Rick Berndt and Josh Berndt, t/d/a/b R&B Contracting, respectfully request that their Preliminary Objections pursuant to Rule 1028(a)(3) be granted and that Paragraph 13(c) of the Complaint be stricken.

Respectfully submitted,

DAPPER, BALDASARE, BENSON & KANE, P.C.

By: _____


Brian S. Kane

*(Counsel for Defendants
Rick Berndt and Josh Berndt,
t/d/a/b R&B Contracting*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Preliminary Objections has been forwarded to Plaintiffs' counsel by U.S. Mail, postage prepaid, the 5th day of September 2003 addressed as follows:

James A. Naddeo, Esquire
211 ½ E. Locust Street
Marino Building
P.O. Box 552
Clearfield, PA 16830
(Counsel for Plaintiffs)

DAPPER, BALDASARE, BENSON & KANE, P.C.

By: _____


Brian S. Kane

FILED
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cc
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

RUSSEL S. TICE and ELAINE R. TICE,
Husband and wife,

CIVIL ACTION

No.: 03-1078-CD

Plaintiffs,

v.

RICK BERNDT and JOSH BERNDT,
T/D/A/B R&B CONTRACTING,

Defendants.

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2003, upon consideration
of Defendants' Preliminary Objections, it is hereby ORDERED, ADJUDGED and DECREED
that Paragraph No. 13(c) of the Complaint is stricken.

BY THE COURT:

_____/J.

FILED ^{icc}
OCT 13 2003
William A. Shaw
Prothonotary/Clerk of Courts

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/4 EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

William A. Shaw
Prothonotary/Clerk of Courts

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

RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
JOSH BERNDT,
T/D/B/A R&B CONTRACTING,
Defendants.

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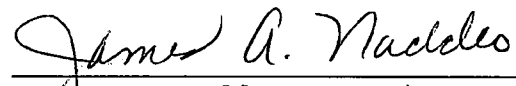
No. 03 - 1078 - CD

ANSWER TO NEW MATTER

NOW COME the Plaintiffs, Russell S. Tice and Elaine R. Tice, and by their attorney, James A. Naddeo, Esquire, set forth the following:

28. States a conclusion to which no answer is required. To the extent that an answer may be required, it is denied that Plaintiffs in any manner failed to diligently mitigate their damages.

Respectfully submitted,



James A. Naddeo, Esquire
Attorney for Plaintiffs

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

RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
JOSH BERNDT,
T/D/B/A R&B CONTRACTING,
Defendants.

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No. 03 - 1078 - CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Answer to New Matter filed in the above-captioned action was served on the following person and in the following manner on the 13th day of October, 2003:

First-Class Mail, Postage Prepaid

Brian S. Kane, Esquire
Dapper, Baldasare, Benson & Kane, PC
Three Gateway Center, Suite 1375
401 Liberty Avenue
Pittsburgh, PA 15222


James A. Naddeo, Esquire
Attorney for Plaintiffs

COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared ELAINE R. TICE, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Answer are true and correct to the best of her knowledge, information and belief.

Elaine R. Tice

SWORN and SUBSCRIBED before me this 8th day of October, 2003.

Notarial Seal
Jennifer L. Royer, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires May 17, 2007

FILED ^{icc}
OCT 14 2003
William A. Shaw
Prothonotary/Clerk of Courts

Atty Naddeo
[Signature]

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

William A. Shaw
Prothonotary/Clerk of Courts

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

RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
JOSH BERNDT,
T/D/B/A R&B CONTRACTING,
Defendants.

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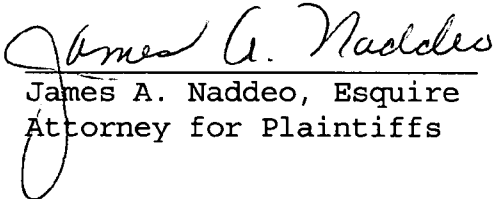
No. 03 - 1078 - CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Answer to Request for Production of Documents and Answers to Interrogatories in the above-captioned action were served on the following person and in the following manner on the 14th day of October, 2003:

First-Class Mail, Postage Prepaid

Brian S. Kane, Esquire
Dapper, Baldasare, Benson & Kane, PC
Three Gateway Center, Suite 1375
401 Liberty Avenue
Pittsburgh, PA 15222


James A. Naddeo, Esquire
Attorney for Plaintiffs

FILED

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OCT 29 2003

William A. Shaw
Prothonotary

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

RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
JOSH BERNDT,
T/D/B/A R&B CONTRACTING,
Defendants.

No. 03 - 1078 - CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

OCT 29 2003

William A. Shaw
Prothonotary

FILED

OCT 29 2003

William A. Shaw
Prothonotary

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

RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
JOSH BERNDT,
T/D/B/A R&B CONTRACTING,
Defendants.

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No. 03 - 1078 - CD

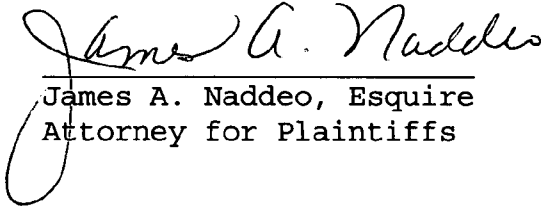
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Taking Deposition of Rick Berndt and Josh Berndt in the above-captioned action was served on the following persons and in the following manner on the 29th day of October, 2003:

First-Class Mail, Postage Prepaid

Brian S. Kane, Esquire
Dapper, Baldasare, Benson & Kane, PC
Three Gateway Center, Suite 1375
401 Liberty Avenue
Pittsburgh, PA 15222

ASAP Court Reporting
P.O. Box 345
Ebensburg, PA 15931


James A. Naddeo, Esquire
Attorney for Plaintiffs

_____Lap over margin_____

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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

RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
JOSH BERNDT,
T/D/B/A R&B CONTRACTING,
Defendants.

No. 03 - 1078 - CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

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NOV 12 2003

William A. Shaw
Prothonotary

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

RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
JOSH BERNDT,
T/D/B/A R&B CONTRACTING,
Defendants.

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No. 03 - 1078 - CD


CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Amended Notice of Taking Deposition of Rick Berndt and Josh Berndt in the above-captioned action was served on the following persons and in the following manner on the 12th day of November, 2003:

First-Class Mail, Postage Prepaid

Brian S. Kane, Esquire
Dapper, Baldasare, Benson & Kane, PC
Three Gateway Center, Suite 1375
401 Liberty Avenue
Pittsburgh, PA 15222

ASAP Court Reporting
P.O. Box 345
Ebensburg, PA 15931


James A. Naddeo, Esquire
Attorney for Plaintiffs

FILED

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FEB 24 2004

William A. Shew
Prothonotary

JAMES A. NADDEO
ATTORNEY AT LAW
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

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

RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
JOSH BERNDT,
T/D/B/A R&B CONTRACTING,
Defendants.

No. 03 - 1078 - CD

Type of Pleading:

**PRAECIPE TO SETTLE
AND DISCONTINUE**

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

FEB 24 2004

William A. Shaw
Prothonotary

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

RUSSELL S. TICE and
ELAINE R. TICE,
Husband and wife,
Plaintiffs,

v.

RICK BERNDT and
JOSH BERNDT,
T/D/B/A R&B CONTRACTING,
Defendants.

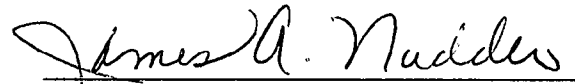
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No. 03 - 1078 - CD

PRAECIPE TO SETTLE AND DISCONTINUE

To the Prothonotary:

Please mark the above-captioned case settled and
discontinued.


James A. Naddeo, Esquire
Attorney for Plaintiffs

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

CIVIL DIVISION

**Russell S. Tice
Elaine R. Tice**

Vs.

No. 2003-01078-CD

**Rick Berndt
Josh Berndt
R & B Contracting**

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on February 24, 2004, marked:

Discontinued, Settled, and Ended.

Record costs in the sum of \$139.97 have been paid in full by Attorney.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 24th day of February A.D. 2004.

William A. Shaw, Prothonotary