

03-1300-CD
SCOTT B. COWFER vs. BARRY FOX, et al.

Mechanical Liens

Date	Judge
9/3/2003	No Judge
	Filing: Mechanical Lien Claim Paid by: The Mazza Law Group, P.C. Receipt number: 1865498 Dated: 09/03/2003 Amount: \$20.00 (Check) No cc.
	Filing: Overage Paid by: The Mazza Law Group, P.C. Receipt number: 1865498 Dated: 09/03/2003 Amount: \$5.00 (Check)
9/23/2003	No Judge
	✓ Affidavit of Service, Notice of Filing of Mechanics' Lien Claim on Barry and Tammy Fox. filed by s/Amy H. Marshall, Esq. no cc
9/29/2003	No Judge
	✓ Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm
12/10/2003	No Judge
	✓ Certificate of Service Filed by Atty. Marshall Served copy of Complaint on Barry and Tammy Fox 1st class mail on Dec. 8, 2003
1/7/2004	No Judge
	✓ Entry of Appearance on Behalf of Barry and Tammy Fox. filed by, s/Fredrick M. Neiswender, Esquire Certificate of Service 3 cc to Atty Neiswender
	✓ Preliminary Objections to Mechanics' Lien Claim. filed by, s/Frederick M. Neiswender, Esquire 3 cc Atty Neiswender
1/23/2004	No Judge
	✓ Certificate of Service, filed by Atty. Marshall Served Preliminary Objection to Owners P/O on Frederick M. Neiswender.
	✓ Claimant's Preliminary Objections to Owners Preliminary Objections to the Mechanic's Lien, filed by s/Amy Marshall, Esq. No CC
2/5/2004	Paul E. Cherry
	✓ RULE RETURNABLE, NOW, this 4th day of February, 2004, issued upon Claimant, Scott B. Cowfer. Rule Returnable for Answer by the Claimant and Hearing on said P.O.'s to be held on the 25th day of February, 2004, at 2:30 p.m. in Courtroom No. 2. by the Court, s/PEC, J. 3 cc Atty Neiswender
2/25/2004	Paul E. Cherry
	✓ Certificate of Service, Claimant's Amended Preliminary Objections to Owners Preliminary Objections to the Mechanic's Lien, upon Frederick M. Neiswender, Esq., filed by s/Amy H. Marshall Four CC Attorney Marshall
	✓ Claimant's Amended Preliminary Objections to Owners Preliminary Objections to the Mechanic's Lien, filed by s/Amy Marshall Four CC Attorney Marshall
2/26/2004	Paul E. Cherry
	✓ ORDER, NOW, this 25th day of February, 2004, re; Defendant's Preliminary Objection to Mechanic's Lien Claim, Hearing shall be held on the 12th day of March, 2004, at 9:30 a.m., on the sole issue of whether the claimant, Scott B. Cowfer, was the general contractor in this matter. by the Court, s/PEC, J. 1 cc Atty. A. Marshall, Neiswender
3/12/2004	Paul E. Cherry
	✓ ORDER, NOW, this 12th day of March, 2004, re: Hearing as to whether the Plaintiff, Scott B. Cowfer, served as general contractor, Counsel shall file a Letter Brief by no later than April 12, 2004. Counsel shall have an additional 5 days thereafter to file a Reply Brief, if desired. by the Court, s/PEC, J. cc Atty A. Marshall, Neiswender
5/12/2004	Paul E. Cherry
	✓ ORDER, AND NOW, this 11th day of May, 2004, re: Preliminary Objections are hereby GRANTED, Claimant shall more specifically plead the averments of his Mechanics Lien claim within 20 days of the date of this Order. by the Court, s/PEC, J. 1 cc Atty A. Marshall, Neiswender
	✓ ORDER, AND NOW, this 11th day of May, 2004, re: Claimants Preliminary Objections to the Mechanics Lien are hereby DISMISSED. by the Court, s/PEC, J. 1 cc Atty A. Marshall, Neiswender

*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO. 0920
DESTINATION ADDRESS 3787175
PSWD/SUBADDRESS
DESTINATION ID sharon
ST. TIME 01/18 16:40
USAGE T 01' 03
PGS. 8
RESULT OK

Fax: 814/65-7659

Courthouse

Fax

To: SHARONFrom: William A. ShawFax:

378-7175

Date:

January 18, 2008

Phone:Pages:

8

Re:CC: Urgent For Review Please Comment Please Reply Please RecycleComments:

Mechanical Liens

Date		Judge
6/1/2004	✓ Mechanic's Lien Claim. filed by, s/Amy H. Marshall, Esquire Certificate of Service 3 cc Atty Marshall	Paul E. Cherry
7/2/2004	✓ Preliminary Objections, filed by Atty. Neiswender 3 Cert. to Atty.	Paul E. Cherry
7/21/2004	✓ Claimant's Reply to Owners Preliminary Objections to the Mechanic's Lien, filed by Atty. Marshall no cert.	Paul E. Cherry
8/9/2004	✓ Rule Returnable, filed 3 Cert. to Atty. Neiswender NOW, this 6th day of Aug., 2004, Rule to be held on Sept. 23, 2004	Paul E. Cherry
9/21/2004	✓ Order, AND NOW, this 20th day of September, 2004, the Court being advised that counsel for Plaintiff, Amy M. Marshall, was not properly served with notice of hearing scheduled for Thursday, September 23, 2004 and counsel for Plaintiff, Amy M. Marshall, Esquire, having a conflict with the scheduled date and time, it is the ORDER of this Court that hearing be and is hereby continued until the 27th day of October, 2004, beginning at 9:30 A.M. in Courtroom No. 2 of the Clearfield County Courthouse. BY THE COURT, Paul E. Cherry, Judge. 2 CC Atty Marshall, 1 CC Atty Neiswender	Paul E. Cherry
10/28/2004	✓ Order NOW, this 27th day of October, 2004, following argument on Preliminary Objections filed on behalf of Barry and Tammy Fox, owners, it is the ORDER of this Court that said Preliminary Objections be and are hereby dismissed. Claimant, Scott B. Cowfer, shall file an amended complaint within no more than twenty days from this date, pleading with specificity the number of hours devoted to work performed, as well as costs thereof. S/PEC 1 CC to Atty. A. Marshall, Neiswender.	Paul E. Cherry
11/12/2004	✓ Amended Complaint, on behalf of Plaintiff, filed by s/ Amy H. Marshall , Esquire. 2 CC to Atty.	Paul E. Cherry
2/1/2005	✓ Answer to Amended Complaint and New Matter, filed by s/Fredrick M. Neiswender, Esq. Three CC Attorney Neiswender	Paul E. Cherry
2/3/2005	✓ Default Notice, you are in default and must act within 10 days or judgment may be entered against you. Filed by s/ Amy Marshall, Esquire. No CC ✓ Certificate of Service, copy of Default Notice, served on Feb. 2, 2005, to Frederick M. Neiswender, Esquire, and Bary and Tammy Fox. Filed by s/ Amy H. Marshall, Esquire. No CC	Paul E. Cherry
10/26/2006	✓ Praecipe for Substitution of Counsel, filed. Please be advised that Frederick Paul E. Cherry M. Neiswender Esquire, is withdrawing from the case as counsel for Defendants, and Attorneys David B. Consiglio and Stacy Parks Miller are to be substituted as counsel for Defendants, filed by s/ Frederick M. Neiswender Esq., David B. Consiglio Esq and Stacy Parks Miller Esq. No CC., Copy to C/A.	Paul E. Cherry
11/27/2006	✓ Plaintiff's Consent to Amended Answer and New Matter, filed by s/ David B. Paul E. Cherry Consiglio Esq. No CC. ✓ Defendant's Amended Answer and New Matter, filed by s/ David B. Consiglio Esq. No CC.	Paul E. Cherry
5/1/2007	✓ Certificate of Readiness for Trial, filed by s/ David B. Consiglio, Esquire. No CC	Paul E. Cherry
7/30/2007	✓ Motion For Consolidation, filed by s/ David B. Consiglio, Esquire. No CC	Paul E. Cherry
7/31/2007	✓ Order, this 30th day of July, 2007, Motion to Consolidate Case No. 03-1300-CD and Case No. 2007-177-CD is Granted. The cases shall be consolidated and a pre-trial conference shall be held at 10:00 a.m. August 27, 2007. By The Court, /s/ Paul E. Cherry, Judge. 4CC Atty. Consiglio	Paul E. Cherry

Date: 1/18/2008

Time: 03:36 PM

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Clearfield County Court of Common Pleas

User: LMILLER

Civil Disposition Report

CT COMMON PLEAS,

All Case Types

From 1/14/2008 to 1/18/2008

All Judgment Types

Case	Parties	Filing date	Judgment	Disposition	Disposition Date
2003-00452-CD	Commonwealth of Pennsylvania Plaintiff Witkosky, Andrew R. Defendant	01/14/2008	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment: \$326.49	Writ of Revival	1/14/2008
2006-01125-CD	Bank of America, N.A. Plaintiff Fleet National Bank Plaintiff NC Two, L.P. Plaintiff S & T Bank Subject	01/16/2008	Judgment Garnishee In favor of: Plaintiff Judgment amount or comment:	Satisfied	1/16/2008
2006-01298-CD	County National Bank Subject MBNA America Bank, N.A. Plaintiff Zapsky, Sandra L. Defendant	01/18/2008	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$10,039.32	Writ of Execution	1/18/2008
2006-02052-CD	Commonwealth of Pennsylvania Plaintiff Parks, John C. Defendant Parks, Teressa A. Defendant	01/15/2008	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment:	Satisfied	1/15/2008
2007-00407-CD	Citigroup Mortgage Loan Trust Plaintiff HSBC Bank of USA Plaintiff Kolesar, Kristine J. Defendant Kolesar, Paul A. Jr. Defendant	01/14/2008	Default Judgment In favor of: Plaintiff Judgment amount or comment:	Vacated	1/14/2008
2007-00495-CD	Hubler, Clark J. Defendant Shadeck, Eugene Plaintiff	01/14/2008	Court Ordered In favor of: Plaintiff Judgment amount or comment: \$25,200.00	Open	1/14/2008
2007-01041-CD	Indymac Bank, F.S.B. Plaintiff Ogden, Christine M. Defendant Ogden, Trent Defendant	01/16/2008	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$68,375.05	Writ of Execution	1/16/2008

Date: 1/30/2008

Clearfield County Court of Common Pleas

User: LMILLER

Time: 10:52 AM

ROA Report

Page 3 of 3

Case: 2003-01300-CD

Current Judge: Paul E. Cherry

Scott B. Cowfer vs. Barry Fox, Tammy Fox

Mechanical Liens

Date	Judge	
8/28/2007	✓ Order, Non-Jury Trial is scheduled for Nov. 19, 2007, beginning at 9:00 a.m. in Courtroom 2. (see original). By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Marshall, Consiglio, Miller, Neiswender	Paul E. Cherry
9/26/2007	✓ Order, this 25th day of Sept., 2007, upon the Motion to Continue Trial Date, Paul E. Cherry the Motion is Granted. Non-Jury Trial is scheduled for the 8th day of Feb., 2008 beginning at 9:00 a.m. All other provisions of the Order of August 28, 2007 shall remain in effect. By the court, /s/ Paul E. Cherry, Judge. 4CC Atty. Consiglio	Paul E. Cherry
	✓ Order, this 26th day of Sept., 2007, Pre-Trial Conference is scheduled for Dec. 13, 2007 at 9:30 a.m. in Judge's Chambers. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Consiglio, Marshall & Steele, Miller	Paul E. Cherry
	✓ Motion to Continue Trial date, filed by s. David B. Consiglio Esq. No CC.	Paul E. Cherry
12/13/2007	✓ Order, filed Cert. to A. Marshall, S. Miller & D. Consiglio	Paul E. Cherry
	✓ RE: Non-Jury Trial is scheduled for Feb. 8, 2008.	
1/14/2008	✓ Motion to Withdraw As Counsel, filed by s/ Amy H. Marshall, Esquire 1CC Atty.	Paul E. Cherry
1/16/2008	✓ Rule To Show Cause Why Motion Should Not Be Granted: NOW, this 16th day of Jan., 2008, upon consideration of the Motion of Babst, Calland, Clemens and Zomnir, P.C., a Rule is issued upon the Owners. Rule Returnable the 24th day of Jan., 2008, Courtroom 2 at 2:00 p.m. By The Court, /s/ Paul E. Cherry, Judge. 1CC to C/A to Fax to Atty. Marshall; 4CC Atty. Marshall. Orig. to 07-177-CD	Paul E. Cherry
1/28/2008	✓ Order, this 24th day of Jan., 2008, Plaintiff's Motion to Withdraw as Counsel is Granted. By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Marshall/Steele/Kirk, Consiglio, S. Miller	Paul E. Cherry
1/29/2008	✓ Notice, if no objections are made to the text of the transcript within 5 days after such notice, the transcript will become part of the record upon being filed in the Prothonotary's Office. filed by s/ Thomas D. Snyder, Official Court Reporter.	Paul E. Cherry
	Transcript of Proceedings, filed. Evidentiary Hearing held on March 12, 2004 before The Honorable Paul E. Cherry, Judge.	Paul E. Cherry

1-30-08 Praecept for withdrawal of Appearance

Clearfield County Court of Common Pleas

User: LMILLER

Civil Disposition Report

CT COMMON PLEAS,

All Case Types

From 1/14/2008 to 1/18/2008

All Judgment Types

Case	Parties	Filing date	Judgment	Disposition	Disposition Date
2007-01112-CD	Clearview Federal Credit Uni Plaintiff McKay, Michelle L. Defendant	01/14/2008	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$58,859.46	Writ of Execution	1/14/2008
2007-01211-CD	Borger, Gregg L. Defendant Clearfield Bank and Trust Co Plaintiff	01/14/2008	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$19,924.82	Open	1/14/2008
2007-01348-CD	Chase Bank USA, N.A. Plaintiff Clark, Kathleen K. Defendant	01/18/2008	Court Ordered In favor of: Plaintiff Judgment amount or comment: \$2,865.22	Open	1/18/2008
2007-01594-CD	First Commonwealth Bank Plaintiff Hepburn, Harry B. Defendant Hepburn, Jacqueline M. Defendant	01/14/2008	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$6,448.78	Open	1/14/2008
2007-01594-CD	First Commonwealth Bank Plaintiff Hepburn, Harry B. Defendant Hepburn, Jacqueline M. Defendant	01/14/2008	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$6,448.78	Writ of Execution	1/14/2008
2007-01678-CD	Countrywide Home Loans, Inc Plaintiff Rodkey, Deana A. Defendant	01/14/2008	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$63,409.43	Writ of Execution	1/14/2008
2007-01678-CD	Countrywide Home Loans, Inc Plaintiff Rodkey, Deana A. Defendant	01/14/2008	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$63,409.43	Open	1/14/2008
2007-01905-CD	Hughes, Richard T. Defendant Kane, Joseph F. Plaintiff	01/18/2008	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$13,500.00	Open	1/18/2008
2007-01938-CD	Commonwealth of Pennsylvania Plaintiff Friberg, Ralph V. III Defendant	01/14/2008	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment:	Removed	1/14/2008
2008-00037-CD	Cantolina, Paul Thomas Defendant Mason Law Office Plaintiff	01/14/2008	DJ Transcript Judgment In favor of: Plaintiff Judgment amount or comment: \$3,340.25	Open	1/14/2008

FILED

SEP 03 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

SCOTT B. COWFER, :
Contractor, Claimant :
:
vs. : No. *03-1300-CD*
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :

MECHANIC'S LIEN CLAIM

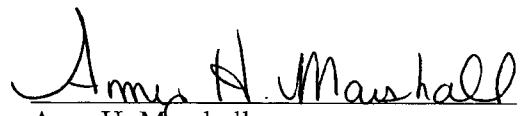
CLAIMANT, Scott B. Cowfer, contractor, through his counsel, The Mazza Law Group, P.C. and Amy H. Marshall, files this claim against the improvements and property in Clearfield County, PA, described in Exhibit "A", hereto, for the payment of debt due to claimant as a contractor for labor furnished by Claimant in the construction of the Owners' residence. In support of the claim, the Claimant makes the following statement:

1. The Owners of the property are Barry A. and Tammy Fox, with an address at 106 Walnut Street, Smithmill, PA 16680.
2. The property which is subject to this claim is the Owners' residence at the aforesaid address.
3. The Parties had an oral agreement whereby the Owners provided the materials to complete the construction. The Contractor provided labor at an agreed upon price of \$24,700.00.
4. The Owners made an initial down payment of \$2,000.00 and one additional payment of \$4,000.00.

5. The Owners later agreed to pay an additional \$650.00 to have the concrete floor poured in the garage, which was in addition to the original contract price of \$24,700.00.
6. The balance remaining to be paid pursuant to the agreement is \$19,350.00.
7. The contractor last worked at the residence during the week ending July 4, 2003.
8. There is due and owing the amount of \$19,350.00, for which this claim is made.

Respectfully submitted,

Date: 8/26/03



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, PC
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CLEARFIELD :

VERIFICATION

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

8-26-03-
Date

Scott B. Cowfer
Scott B. Cowfer

ALL those certain pieces or parcels of land situated, lying and being in Culich Township, Clearfield County, Pennsylvania, bounded and described as follows:

THE FIRST THEREOF: BEGINNING at a post on the North side of Patton Street and on the Western side of an unnamed Street; thence along the Western side of said unnamed Street North Fifty-eight degrees Thirty-nine minutes West ($N 58^\circ 39' W$) Four Hundred Thirty-five and Six tenths (435.6') feet to a point; thence by land of Ramey Estate South Thirty-one degrees Twenty-one minutes West ($S 31^\circ 21' W$) Two Hundred (200') feet to other land of said Grantors; thence by Grantors' land South Fifty-eight degrees Thirty-nine minutes East ($S 58^\circ 39' E$) Four Hundred Thirty-five and Six tenths (435.6') feet to a post on the Northern side of Patton Street; thence along the Northern side of Patton Street North Thirty-one degrees Twenty-one minutes East ($N 31^\circ 21' E$) Two Hundred (200') feet to the post at the place of beginning. CONTAINING Two (2) acres, more or less. Being further identified by Clearfield County Assessment No. 118-K16-513-00007.

EXCEPTING and RESERVING such exceptions and reservations as are contained in prior deeds in the chain of title.

BEING the same premises as were conveyed unto Wasco Warholic, also known as Wasco Worcolick, also known as Wasco Warholic, by deed of Paul Santoro, et ux, dated April 23, 1920, and entered for record in Clearfield County Deed Book Volume 242, Page 286.

THE SECOND THEREOF: BEGINNING at a post corner on the Northwestern side of an alley and which post is South Thirty degrees Forty-four minutes

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West ($S 30^\circ 44' W$) One Hundred (100') feet from the Northwestern corner of an intersecting street; thence along land of the Ramey Estate North Fifty-nine degrees Sixteen minutes West ($N 59^\circ 16' W$) Seven Hundred Thirty and One-tenth (730.1') feet to a post corner on the Eastern side of the right of way line of the Janesville Branch of the Pennsylvania Railroad; thence along or near the line of the said right of way South Seventeen degrees Thirty-two minutes West ($S 17^\circ 32' W$) Two Hundred Five and Two tenths (205.2') feet to a post corner of land sold to Metro Berezonsky; thence by said land South Fifty-nine degrees Sixteen minutes East ($S 59^\circ 16' E$) Six Hundred Eighty-three and Seven tenths (683.7') feet to a post corner on the Northwestern side of an alley; thence along the Northwestern side of said alley North Thirty degrees Forty-four minutes East ($N 30^\circ 44' E$) Two Hundred (200') feet to a post corner and the place of beginning. CONTAINING Three and Twenty-three hundredths (3.23) acres, and being part of tract number 11 of the Ramey Estate lands. BEING further identified by Clearfield County Assessment Number 118-K16-513-00016.

EXCEPTING and RESERVING such exceptions and reservations as are contained in prior deeds in the chain of title.

BEING the same premises as were conveyed to Wasco Worcolick, also known as Wasco Warholic, also known as Wasco Warholic, by deed of David K. Ramey dated July 10, 1924, and entered for record in Clearfield County Deed Book Volume 339, Page 247.

The said Wasco Warholic, a widower, also known as Wasco Worcolick, also known as Wasco Warholic, died testate on February 8, 1968, and by his Last Will and Testament dated October 22, 1963, and duly entered for probate in Clearfield County Will Book 13, Page 565, devised his entire estate to his son, Michael Warholic, Grantor herein.

EXHIBIT

A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

SCOTT B. COWFER, :
Contractor, Claimant :
:
vs. : No. 03-1300-CD
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :
:

AFFIDAVIT OF SERVICE

I, Amy H. Marshall, Esq., being duly sworn according to law depose and say that, on September 10, 2003, the Clearfield County Sheriff served the attached Notice of Filing of Mechanics' Lien Claim on Barry and Tammy Fox, the owners of the property against which the claim was filed at 106 Walnut Street, Smithmill, PA 16680.

Date: 9/22/03

Amy H. Marshall

Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, P.C.
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

FILED

SEP 23 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

SCOTT B. COWFER,
Contractor, Claimant

vs. : No. 03-1300-CD

BARRY AND TAMMY FOX,
Husband and Wife, Owners :

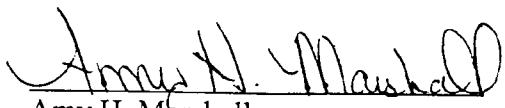
To: Barry and Tammy Fox
106 Walnut Street
Smithmill, PA 16680

NOTICE OF FILING OF MECHANICS LIEN

You are hereby notified that a mechanic's lien claim in the amount of \$19,350.00 has been filed on behalf of Scott B. Cowfer, against the property at 106 Walnut Street, Smithmill, PA 16680, of which you are the owner or reputed owner. The claim was filed on September 3, 2003, in the Court of Common Pleas of Clearfield County, as of 2003-1300. A copy of the claim is attached.

Respectfully submitted,

Date: 9/8/03


Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, P.C.
1315 South Allen Street, Suite 302
State College, PA 16801
(814) 237-6255

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

1
FILED
1.51
SEP 03 2003
William A. Shaw
Prothonotary Clerk of Courts

SCOTT B. COWFER,
Contractor, Claimant

vs.

No. 03-1300-Q

BARRY AND TAMMY FOX,
Husband and Wife, Owners

MECHANIC'S LIEN CLAIM

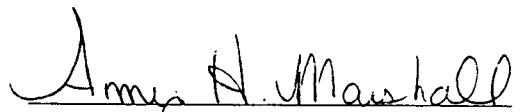
CLAIMANT, Scott B. Cowfer, contractor, through his counsel, The Mazza Law Group, P.C. and Amy H. Marshall, files this claim against the improvements and property in Clearfield County, PA, described in Exhibit "A", hereto, for the payment of debt due to claimant as a contractor for labor furnished by Claimant in the construction of the Owners' residence. In support of the claim, the Claimant makes the following statement:

1. The Owners of the property are Barry A. and Tammy Fox, with an address at 106 Walnut Street, Smithmill, PA 16680.
2. The property which is subject to this claim is the Owners' residence at the aforesaid address.
3. The Parties had an oral agreement whereby the Owners provided the materials to complete the construction. The Contractor provided labor at an agreed upon price of \$24,700.00.
4. The Owners made an initial down payment of \$2,000.00 and one additional payment of \$4,000.00.

5. The Owners later agreed to pay an additional \$650.00 to have the concrete floor poured in the garage, which was in addition to the original contract price of \$24,700.00.
6. The balance remaining to be paid pursuant to the agreement is \$19,350.00.
7. The contractor last worked at the residence during the week ending July 4, 2003.
8. There is due and owing the amount of \$19,350.00, for which this claim is made.

Respectfully submitted,

Date: 8/26/03



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, PC
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CLEARFIELD :

VERIFICATION

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

8-26-03-
Date

Scott B. Cowfer
Scott B. Cowfer

ALL those certain pieces or parcels of land situate, lying and being in Gulich Township, Clearfield County, Pennsylvania, bounded and described as follows:

THE FIRST THEREOF: BEGINNING at a post on the North side of Patton Street and on the Western side of an unnamed Street; thence along the Western side of said unnamed Street North Fifty-eight degrees Thirty-nine minutes West (N 58° 39' W) Four Hundred Thirty-five and Six tenths (435.6') feet to a point; thence by land of Ramey Estate South Thirty-one degrees Twenty-one minutes West (S 31° 21' W) Two Hundred (200') feet to other land of said Grantors; thence by Grantors' land South Fifty-eight degrees Thirty-nine minutes East (S 58° 39' E) Four Hundred Thirty-five and Six tenths (435.6') feet to a post on the Northeast side of Patton Street; thence along the Northern side of Patton Street North Thirty-one degrees Twenty-one minutes East (N 31° 21' E) Two Hundred (200') feet to the post at the place of beginning. CONTAINING Two (2) acres, more or less. Being further identified by Clearfield County Assessment No. 118-K16-513-00007.

EXCEPTING and RESERVING such exceptions and reservations as are contained in prior deeds in the chain of title.

BEING the same premises as were conveyed unto Wasco Warholic, also known as Wasco Worcolick, also known as Wasco Warholic, by deed of Paul Santoro, et ux, dated April 23, 1920, and entered for record in Clearfield County Deed Book Volume 242, Page 286.

THE SECOND THEREOF: BEGINNING at a post corner on the Northwestern side of an alley and which post is South Thirty degrees Forty-four minutes

vol 1370 PAGE 150

West (S 30° 44' W) One Hundred (100') feet from the Northwestern corner of an intersecting street; thence along land of the Ramey Estate North Fifty-nine degrees Sixteen minutes West (N 59° 16' W) Seven Hundred Thirty and One-tenth (730.1') feet to a post corner on the Eastern side of the right of way line of the Janesville Branch of the Pennsylvania Railroad; thence along or near the line of the said right of way South Seventeen degrees Thirty-two minutes West (S 17° 32' W) Two Hundred Five and Two tenths (205.2') feet to a post corner of land sold to Metro Berezonsky; thence by said land South Fifty-nine degrees Sixteen minutes East (S 59° 16' E) Six Hundred Eighty-three and Seven tenths (683.7') feet to a post corner on the Northwestern side of an alley; thence along the Northwestern side of said alley North Thirty degrees Forty-four minutes East (N 30° 44' E) Two Hundred (200') feet to a post corner and the place of beginning. CONTAINING Three and Twenty-three hundredths (3.23) acres, and being part of tract number 11 of the Ramey Estate lands. BEING further identified by Clearfield County Assessment Number 118-K16-513-00016.

EXCEPTING and RESERVING such exceptions and reservations as are contained in prior deeds in the chain of title.

BEING the same premises as were conveyed to Wasco Worcolick, also known as Wasco Warholic, also known as Wasco Warholic, by deed of David K. Ramey dated July 10, 1924, and entered for record in Clearfield County Deed Book Volume 539, Page 247.

The said Wasco Warholic, a widower, also known as Wasco Worcolick, also known as Wasco Warholic, died testate on February 8, 1968, and by his Last Will and Testament dated October 22, 1963, and duly entered for probate in Clearfield County Will Book 10, Page 565, devised his entire estate to his son, Michael Warholic, Grantor herein.

EXHIBIT

A

In The Court of Common Pleas of Clearfield County, Pennsylvania

COWFER, SCOTT B.

VS.

FOX, BARRY AND TAMMY

Sheriff Docket # 14551

03-1300-CD

NOTICE OF FILING OF MECHANIC'S LIEN & MECHANIC'S LIEN C

SHERIFF RETURNS

NOW SEPTEMBER 10, 2003 AT 11:11 AM SERVED THE WITHIN NOTICE OF FILING OF MECHANIC'S LIEN and MECHANIC'S LIEN CLAIM ON BARRY And TAMMY FOX, DEFENDANTS AT RESIDENCE, 106 WALNUT ST., SMITHMILL, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO BARRY FOX A TRUE AND ATTESTED COPY OF THE ORIGINAL NOTICE OF FILING OF MECHANIC'S LIEN CLAIM and MECHANIC'S LIEN CLAIM AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

Return Costs

Cost	Description
38.53	SHERIFF HAWKINS PAID BY: ATTY CK# 7674
10.00	SURCHARGE PAID BY: ATTY CK# 7675

Sworn to Before Me This

29th Day Of Sept. 2003
Chester A. Hawkins

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
by Marly Hawkins
Chester A. Hawkins
Sheriff

FILED
013145-84
SEP 29 2003 *[Signature]*

William A. Shaw,
Prothonotary, Clearfield County

COMMONWEALTH OF PENNSYLVANIA
COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

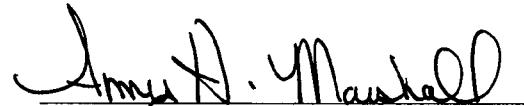
SCOTT B. COWFER, :
Contractor, Claimant :
:
vs. : No. 03-1300-CD
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Complaint, was served on BARRY and TAMMY FOX, parties of record, in the above-entitled matter, by depositing the same within the custody of the United States Postal Service, certified, first class postage prepaid, on December 8, 2003, addressed as follows:

Barry and Tammy Fox
106 Walnut Street
Smithmill, PA 16680

Dated: December 8, 2003


Amy H. Marshall
Attorney for Scott B. Cowfer
Attorney ID No.: #74852
The Mazza Law Group, P.C.
1315 S. Allen Street, Suite 302
State College, PA 16801
Telephone (814) 237-6255
Facsimile (814) 237-5752
E-mail: marshall@mazzalaw.com

FILED

DEC 10 2003

William A. Shaw
Prothonotary

COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

SCOTT B. COWFER,)
Plaintiff)
)
)
vs.) Case No. 03-1300-CD
)
BARRY AND TAMMY FOX,)
Defendant)

NOTICE TO DEFEND

TO: DEFENDANT

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 claims 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 Courthouse
230 E. Market St.
Clearfield, PA
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW

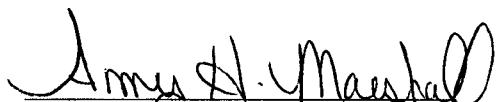
SCOTT B. COWFER, :
Contractor, Claimant :
vs. :
: No. 03-1300-CD
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :

COMPLAINT

1. Plaintiff, Scott B. Cowfer, is an individual with an address at 1359 Bell Hollow Road, Port Matilda, PA 16870.
2. Defendant's are individuals with an address at 106 Walnut Street, Smithmill, PA 16680.
3. The Plaintiff, Scott Cowfer, was acting as the general contractor in connection with this claim.
4. Plaintiff did not sign a release and waiver of Mechanic's Lien for the work done at 106 Walnut Street, Smithmill, PA.
5. Plaintiff filed a Mechanic's Lien claim on September 3, 2003, in the Court of Common Pleas of Clearfield County, No. 2003-1300, a copy of which is attached as exhibit A.
6. The amount of Plaintiff's claim is \$19,350.00.

WHEREFORE, Plaintiff demands judgement against the defendant in the sum of \$19,350.00, with interest and costs.

Respectfully submitted,



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, PC
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

11-28-03

Date

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CLEARFIELD :

VERIFICATION

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

11-28-03
Date

Scott B. Cowfer
Scott B. Cowfer

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

SCOTT B. COWFER, :
Contractor, Claimant :
vs. : No. 03-1300-CD
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :

AFFIDAVIT OF SERVICE

I, Amy H. Marshall, Esq., being duly sworn according to law depose and say that, on September 10, 2003, the Clearfield County Sheriff served the attached Notice of Filing of Mechanics' Lien Claim on Barry and Tammy Fox, the owners of the property against which the claim was filed at 106 Walnut Street, Smithmill, PA 16680.

Date: 9/22/03

Amy H. Marshall

Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, P.C.
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

EXHIBIT

A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

SCOTT B. COWFER,
Contractor, Claimant

vs. : No. 03-1300-CD

BARRY AND TAMMY FOX,
Husband and Wife, Owners

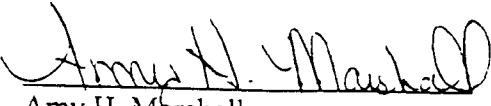
To: Barry and Tammy Fox
106 Walnut Street
Smithmill, PA 16680

NOTICE OF FILING OF MECHANICS LIEN

You are hereby notified that a mechanic's lien claim in the amount of \$19,350.00 has been filed on behalf of Scott B. Cowfer, against the property at 106 Walnut Street, Smithmill, PA 16680, of which you are the owner or reputed owner. The claim was filed on September 3, 2003, in the Court of Common Pleas of Clearfield County, as of 2003-1300. A copy of the claim is attached.

Respectfully submitted,

Date: 9/8/03


Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, P.C.
1315 South Allen Street, Suite 302
State College, PA 16801
(814) 237-6255

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

1
FILED

151
SEP 03 2003

William A. Shaw
Prothonotary Clerk of Courts

SCOTT B. COWFER,
Contractor, Claimant

vs. : No. 03-1300-C

BARRY AND TAMMY FOX.
Husband and Wife, Owners

MECHANIC'S LIEN CLAIM

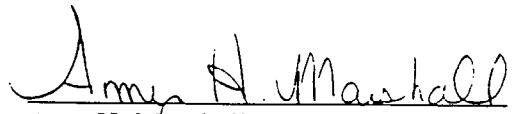
CLAIMANT, Scott B. Cowfer, contractor, through his counsel, The Mazza Law Group, P.C. and Amy H. Marshall, files this claim against the improvements and property in Clearfield County, PA, described in Exhibit "A", hereto, for the payment of debt due to claimant as a contractor for labor furnished by Claimant in the construction of the Owners' residence. In support of the claim, the Claimant makes the following statement:

1. The Owners of the property are Barry A. and Tammy Fox, with an address at 106 Walnut Street, Smithmill, PA 16680.
2. The property which is subject to this claim is the Owners' residence at the aforesaid address.
3. The Parties had an oral agreement whereby the Owners provided the materials to complete the construction. The Contractor provided labor at an agreed upon price of \$24,700.00.
4. The Owners made an initial down payment of \$2,000.00 and one additional payment of \$4,000.00.

5. The Owners later agreed to pay an additional \$650.00 to have the concrete floor poured in the garage, which was in addition to the original contract price of \$24,700.00.
6. The balance remaining to be paid pursuant to the agreement is \$19,350.00.
7. The contractor last worked at the residence during the week ending July 4, 2003.
8. There is due and owing the amount of \$19,350.00, for which this claim is made.

Respectfully submitted.

Date: 8/26/03



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, PC
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

VERIFICATION

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

8-26-03-
Date

Scott B. Cowfer
Scott B. Cowfer

ALL those certain pieces or parcels of land situated, lying and being in Culich Township, Clearfield Co., Pennsylvania, bounded and described as follows:

THE FIRST THEREOF: BEGINNING at a post on the North side of Patton Street and on the Western side of an unnamed Street; thence along the Western side of said unnamed Street North Fifty-eight degrees Thirty-nine minutes West ($N 58^{\circ} 39' W$) Four Hundred Thirty-five and Six tenths (435.6') feet to a point; thence by land of Ramey Estate South Thirty-one degrees Twenty-one minutes West ($S 31^{\circ} 21' W$) Two Hundred (200') feet to other land of said Grantors; thence by Grantors' land South Fifty-eight degrees Thirty-nine minutes East ($S 58^{\circ} 39' E$) Four Hundred Thirty-five and Six tenths (435.6') feet to a post on the Northern side of Patton Street; thence along the Northern side of Patton Street North Thirty-one degrees Twenty-one minutes East ($N 31^{\circ} 21' E$) Two Hundred (200') feet to the post at the place of beginning. CONTAINING Two (2) acres, more or less. Being further identified by Clearfield County Assessment No. 118-K16-513-00007.

EXCEPTING and RESERVING such exceptions and reservations as are contained in prior deeds in the chain of title.

BEING the same premises as were conveyed unto Wasco Warholic, also known as Wasco Worcolick, also known as Wasco Warholic, by deed of Paul Santoro, et ux, dated April 23, 1920, and entered for record in Clearfield County Deed Book Volume 242, Page 286.

THE SECOND THEREOF: BEGINNING at a post corner on the Northwestern side of an alley and which post is South Thirty degrees Forty-four minutes

vol 1370 part 150

West ($S 30^{\circ} 44' W$) One Hundred (100') feet from the Northwestern corner of an intersecting street; thence along land of the Ramey Estate North Fifty-nine degrees Sixteen minutes West ($N 59^{\circ} 16' W$) Seven Hundred Thirty and One-tenth (730.1') feet to a post corner on the Eastern side of the right of way line of the Janesville Branch of the Pennsylvania Railroad; thence along or near the line of the said right of way South Seventeen degrees Thirty-two minutes West ($S 17^{\circ} 32' W$) Two Hundred Five and Two tenths (205.2') feet to a post corner of land sold to Metro Berezonsky; thence by said land South Fifty-nine degrees Sixteen minutes East ($S 59^{\circ} 16' E$) Six Hundred Eighty-three and Seven tenths (683.7') feet to a post corner on the Northwestern side of an alley; thence along the Northwestern side of said alley North Thirty degrees Forty-four minutes East ($N 30^{\circ} 44' E$) Two Hundred (200') feet to a post corner and the place of beginning. CONTAINING Three and Twenty-three hundredths (3.23) acres, and being part of tract number 11 of the Ramey Estate lands. BEING further identified by Clearfield County Assessment Number 118-K16-513-00016.

EXCEPTING and RESERVING such exceptions and reservations as are contained in prior deeds in the chain of title.

BEING the same premises as were conveyed to Wasco Worcolick, also known as Wasco Warholic, also known as Wasco Warholic, by deed of David K. Ramey dated July 10, 1924, and entered for record in Clearfield County Deed Book Volume 539, Page 247.

The said Wasco Warholic, a widower, also known as Wasco Worcolick, also known as Wasco Warholic, died testate on February 8, 1968, and by his Last Will and Testament dated October 22, 1963, and duly entered for probate in Clearfield County Will Book 10, Page 565, devised his entire estate to his son, Michael Warholic, Grantor herein.

EXHIBIT

A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION – LAW)

SCOTT B. COWFER, :
Contractor, Claimant, :
:
vs. : No. 03-1300-CD
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners. :
:
:
:
:
:
:
:
Type of case: Civil Action - Law
:
:
:
Type of pleading: Entry of Appearance.
:
:
:
Filed on behalf of: Owners.
:
:
:
Counsel for Owners:
: Frederick M. Neiswender, Esquire
: Supreme Court No. 74456
: 501 East Market Street, Suite 3
: Clearfield, Pennsylvania 16830
: (814) 765-6500

FILED

JAN 07 2004

William A. Shaw
Prothonotary Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION – LAW)

SCOTT B. COWFER, :
Contractor, Claimant, :
:
vs. : No. 03-1300-CD
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners. :

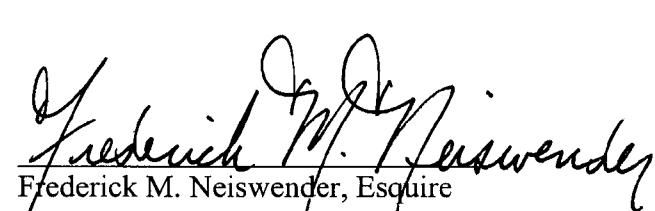
ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance as attorney of record for the Owners, Barry and Tammy Fox
in the above captioned matter.

Date:

1/6/04


Frederick M. Neiswender, Esquire
Supreme Court No. 74456
501 East Market Street, Suite 3
Clearfield, Pennsylvania 16830
(814) 765-6500

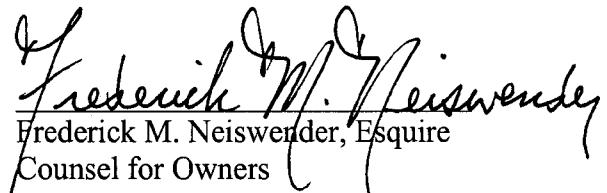
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION – LAW)

SCOTT B. COWFER, :
Contractor, Claimant, :
:
vs. : No. 03-1300-CD
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners. :

CERTIFICATE OF SERVICE

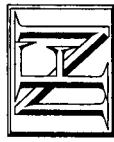
I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Entry Of Appearance was made on January 7, 2004, by mailing, first class, postage prepaid, a true copy to the following persons, at the following addresses:

Amy H. Marshall, Esquire
The Mazza Law Group, PC
1315 South Allen Street, Suite 302
State College, Pennsylvania 16801-5923


Frederick M. Neiswender, Esquire
Counsel for Owners
501 East Market Street, Suite 3
Clearfield, Pennsylvania 16830

FREDERICK M. NEISWENDER
ATTORNEY AND COUNSELLOR AT LAW

501 EAST MARKET STREET • SUITE 3
CLEARFIELD, PENNSYLVANIA 16830



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION – LAW)

SCOTT B. COWFER, :
Contractor, Claimant, :
vs. : No. 03-1300-CD
BARRY AND TAMMY FOX, :
Husband and Wife, Owners. :
: Type of case: Civil Action - Law
: Type of pleading: Preliminary Objections
: to Mechanics' Lien Claim.
: Filed on behalf of: Owners.
: Counsel for Owners:
: Frederick M. Neiswender, Esquire
: Supreme Court No. 74456
: 501 East Market Street, Suite 3
: Clearfield, Pennsylvania 16830
: (814) 765-6500

RECEIVED
CLEARFIELD COUNTY
PROTHONOTARY'S OFFICE

JAN 07 2004

William A. New
Prothonotary/Clerk of Courts

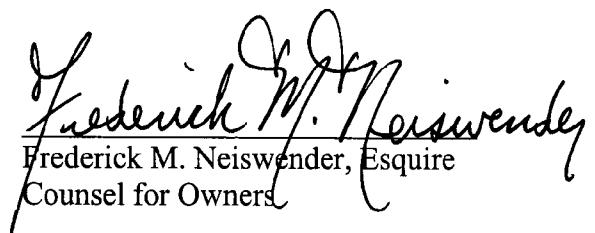
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION – LAW)

SCOTT B. COWFER, :
Contractor, Claimant, :
:
vs. : No. 03-1300-CD
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners. :
:

NOTICE TO PLEAD

To: Scott B. Cowfer:

You are hereby notified to file written response to the enclosed Preliminary Objections to Mechanics' Lien Claim within twenty (20) days from service hereof or a judgment may be entered against you.


Frederick M. Neiswender, Esquire
Counsel for Owners

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION – LAW)

SCOTT B. COWFER, :
Contractor, Claimant, :
:
vs. : No. 03-1300-CD
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners. :
:

PRELIMINARY OBJECTIONS TO MECHANICS' LIEN
CLAIM PURSUANT TO 49 PA. STAT. ANN. § 1505

AND NOW, come the Owners, Barry A. Fox and Tammy D. Fox, Husband and Wife, by and through their attorney, FREDERICK M. NEISWENDER, ESQUIRE, and file these Preliminary Objections to Mechanics' Lien Claim as follows:

I. PRELIMINARY OBJECTION RAISING CLAIMANT'S FAILURE TO PLEAD HIS
MECHANICS' LIEN CLAIM WITH SUFFICIENT SPECIFICITY

1. In paragraph 3 of the Mechanics' Lien Claim, the Claimant states that an oral agreement was entered into between he and the Owners of the subject property whereby the Owners were to provide materials to complete construction and Claimant was to provide labor at an agreed upon price of \$24,700.00.
2. The Owners believe and therefore aver that the terms of the oral agreement provided that the Claimant would be paid for each phase of construction upon its completion and that the Owners were not obligated to pay for any phase prior to its completion.

3. The Mechanics' Lien Claim filed by the Claimant does not state with sufficient specificity, as required by 49 Pa. Stat. Ann. § 1530, the nature of the work completed or set forth an itemized list of hours worked and the dates when the work was performed.

4. As a result, the Claimant cannot justify filing his claim in the amount of \$19, 350.00.

5. Claimant's Mechanics' Lien Claim lacks sufficient specificity to apprise Owners of the issues to be litigated and to allow them to adequately prepare and assert defenses to Claimant's allegations.

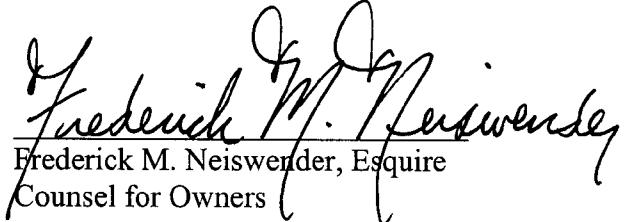
WHEREFORE, Owners respectfully request that this Court order Claimant to more specifically plead the averments of his Mechanics' Lien Claim.

II. PRELIMINARY OBJECTION RAISING CLAIMANT'S FAILURE TO COMPLETE WORK AS AGREED UPON PRIOR TO FILING CLAIM

6. Paragraphs 1 through 5 are incorporated herein as if set forth fully below.
7. As set forth above, the Claimant states that an oral agreement was entered into between he and the Owners of the subject property whereby the Owners were to provide materials to complete construction and Claimant was to provide labor at an agreed upon price of \$24,700.00.
8. The Owners believe and therefore aver that the terms of the oral agreement provided that the Claimant would be paid for each phase of construction upon its completion and that the Owners were not obligated to pay for any phase prior to its completion.
9. The Owners believe and therefore aver that the \$6,000.00 paid to Claimant was payment in full for the work completed on Owners' residence.
10. Claimant states in paragraph 7 of the Mechanics' Lien Claim that he last worked on the residence during the week ending July 4, 2003.
11. However, Claimant had not completed any additional work by July 4, 2003 and did not return to the residence to complete the work.
12. Claimant did not inform the Owners that he would not be returning to the residence to complete the work agreed upon prior to filing the Mechanics' Lien Claim.
13. Claimant left various phases of construction incomplete and is not entitled to the payment of additional sums under the oral agreement between Claimant and Owners.
14. Therefore, Claimant cannot justify an amount due and owing of \$19, 350.00 as set forth in paragraph 8 of the Mechanics' Lien Claim filed in the matter.

WHEREFORE, Owners respectfully request that this Honorable Court grant their Preliminary Objections and strike Claimant's Mechanics' Lien Claim for failure to complete the work agreed upon prior to filing the claim.

Respectfully submitted,


Frederick M. Neiswender, Esquire
Counsel for Owners

BARRY A.FOX and TAMMY D. FOX hereby state that they are the Defendants in this action and that the statements of fact made in the foregoing Preliminary Objections are true and correct upon personal knowledge. The undersigned understand that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

DATE: 1/5/04



BARRY A. FOX

DATE: 1/5/04



TAMMY D. FOX

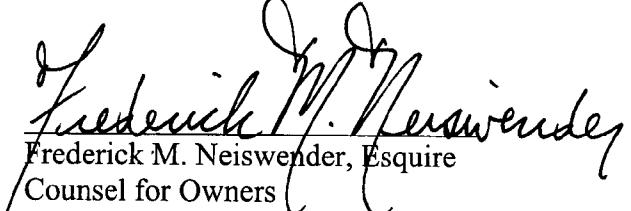
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION - LAW)

SCOTT B. COWFER, :
Contractor, Claimant, :
vs. :
BARRY AND TAMMY FOX, :
Husband and Wife, Owners. :
: No. 03-1300-CD

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing
Preliminary Objections to Mechanics' Lien Claim was made on January 7, 2004, by mailing,
first class, postage prepaid, a true copy to the following persons, at the following addresses:

Amy H. Marshall, Esquire
The Mazza Law Group, PC
1315 South Allen Street, Suite 302
State College, Pennsylvania 16801-5923


Frederick M. Neiswender, Esquire
Counsel for Owners
501 East Market Street, Suite 3
Clearfield, Pennsylvania 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

SCOTT B. COWFER, :
Contractor, Claimant :
vs. :
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :

No. 03-1300-CD

FILED

JAN 23 2004

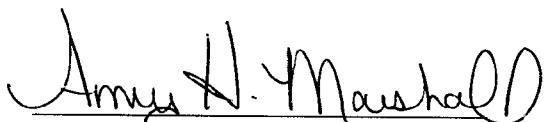
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the foregoing Claimant's Preliminary Objections to Owners Preliminary Objections to the Mechanic's Lien, was served on Frederick M. Neiswender, Esquire, Counsel for parties of record, in the above-entitled matter, by depositing the same within the custody of the United States Postal Service, first class postage prepaid, on January 22, 2004, addressed as follows:

Frederick M. Neiswender, Esquire
501 E. Market Street, Suite 3
Clearfield, PA 16830

Date: 1/22/04



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, P.C.
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW

FILED

SCOTT B. COWFER, : JAN 23 2004

Contractor, Claimant :

William A. Shaw
Prothonotary/Clerk of Courts

vs. : No. 03-1300-CD

:

BARRY AND TAMMY FOX, :
Husband and Wife, Owners :

CLAIMANT'S PRELIMINARY OBJECTIONS TO OWNERS PRELIMINARY
OBJECTIONS TO THE MECHANIC'S LIEN

CLAIMANT, Scott B. Cowfer, through his Counsel, Amy H. Marshall, Esquire, preliminarily objects to the Preliminary Objections to mechanics lien filed by Owners.

I. CLAIMANT OBJECTS TO OWNERS PRELIMINARY OBJECTIONS TO MECHANIC
LIEN AS UNTIMELY.

1. Claimant filed with the Court a Mechanic's Lien against Owners for improvements made to their property located at 106 Walnut Street, Smithmill, PA 16680, on September 3, 2003.

2. The Owners, Barry & Tammy Fox were served the Notice of Filing Mechanics Lien by Clearfield County Sheriff on September 10, 2003.

3. On September 23, 2003, Claimant through Counsel, filed an affidavit of Service with the Court of Common Pleas of Clearfield County indicating the Owners had been properly served on September 10, 2003.

4. On December 8, 2003, the Claimant served the Owners with a Complaint by U.S. mail, to enforce the Mechanics Lien.

5. Owners responded to Claimant's Complaint by way of Preliminary Objections. Owners filed Preliminary Objections to the Mechanics Lien on January 7, 2004.

6. Claimant requests that Owners Preliminary Objections be overruled and stricken as untimely.

II. DISCUSSION.

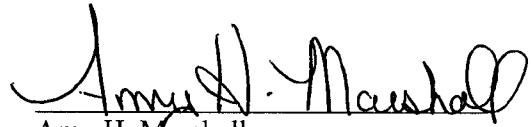
The Claimant instituted this proceeding in early September 2003 with the filing of a Mechanic's Lien. Although Pa. R.C.P. 1026 does not require an Owner to preliminarily object to a Mechanic's Lien within 20 days of its filing, the Claimant would argue that the Owners have filed untimely by waiting 30 days after the enforcement action has commenced to object to the Mechanic's Lien. There is case law which supports this position. The Court of Common Pleas of Luzerne County struck the Preliminary Objections filed by Westinghouse Electric Corporation to the Mechanic's Lien of Standard Iron Works as untimely. *Standard Iron Works v. Westinghouse Electric Corporation*, 35 Pa. D. & C. 3d 53 (1984). Westinghouse Electric filed Preliminary Objections to the Mechanic's Lien of Standard Iron Works after enforcement proceedings had commenced. The Court noted it would not be appropriate to permit a party to file Preliminary Objections right up to the time a judgment is entered. The Court clearly indicated that the filing of a complaint to enforce a Mechanic's Lien was an important fact to be considered in determining whether the Preliminary Objections were filed timely. See 35 Pa. D. & C. 3d 53, 57. The Court further noted that by striking the Preliminary Objections certain defenses would not be available. The Court found that such defenses should be raised in the context of the enforcement

proceeding in accordance with the Rule of Civil Procedure. *See* 35 Pa. D. & C. 3d at 57. The Claimant believes that the Owners should be prohibited from filing Preliminary Objections to the Mechanic's Lien and be required to move forward with the enforcement proceeding. The Claimant has complied with all required notices and thus has provided Owners with timely notice of all filings. The Owners have not only delayed filing Preliminary Objections until after the enforcement action has commenced, but such filing was also past the 20 day notice to plead attached to the Complaint. The Owners had adequate time to file Preliminary Objections to the Mechanic's Lien and have failed to do so. The Claimant should be permitted to move forward with the enforcement action.

WHEREFORE, Claimant respectfully requests that his Court strike Owners Preliminary Objections from the record.

Respectfully submitted,

1/22/04
Date



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, PC
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION – LAW)

SCOTT B. COWFER, :
Contractor, Claimant, :
:
vs. : No. 03-1300-CD
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners. :
:

RULE RETURNABLE

NOW, this 4th day of February, 2004, upon consideration of Preliminary Objections to Mechanics' Lien Claim, a Rule is hereby issued upon the Claimant, Scott B. Cowfer to show cause why the Preliminary Objections should not be granted. Rule Returnable for Answer by the Claimant and hearing on said Preliminary Objections to be held on the 25 day of February, 2004, at 1:30 o'clock P. m. in Courtroom No. 2 of the Clearfield County Courthouse.

BY THE COURT,



Paul E. Cherry
Judge

FILED

FEB 05 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

FILED

FEB 25 2004

SCOTT B. COWFER, :
Contractor, Claimant :
:
vs. :
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :
No. 03-1300-CD

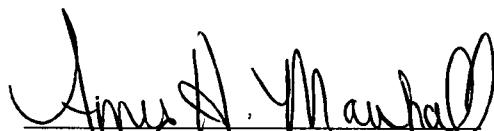
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the foregoing Claimant's Amended Preliminary Objections to Owners Preliminary Objections to the Mechanic's Lien, was served on Frederick M. Neiswender, Esquire, Counsel for parties of record, in the above-entitled matter, via facsimile and by depositing the same within the custody of the United States Postal Service, first class postage prepaid, on February 24, 2004, addressed as follows:

Frederick M. Neiswender, Esquire
501 E. Market Street, Suite 3
Clearfield, PA 16830

Date: 2/25/04



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, P.C.
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

FILED

FEB 25 2004

SCOTT B. COWFER, :
Contractor, Claimant :
:
vs. : No. 03-1300-CD
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :

William A. Shaw
Prothonotary/Clerk of Courts

CLAIMANT'S AMENDED PRELIMINARY OBJECTIONS TO OWNERS
PRELIMINARY OBJECTIONS TO THE MECHANIC'S LIEN

CLAIMANT, Scott B. Cowfer, through his Counsel, Amy H. Marshall, Esquire, would like to amend the Preliminary Objections filed in opposition to Owners Preliminary Objections to mechanics lien. Upon further review and research, the Claimant has additional grounds upon which to object. The additional grounds are set forth as follows:

II. CLAIMANT IS NOT REQUIRED TO COMPLY WITH 49 P.S. § 1503(6) TO PLEAD WITH DETAIL THE CONTENTS OF THE MECHANICS LIEN.

1. The Claimant was the general contractor for the Owners under the construction agreement.
2. Title 49 P.S. § 1503 sets forth the requirements for the content of a mechanics' lien.
3. As the general contractor, the Claimant is required to comply with 49 P.S. § 1503(5).
4. Subsection 5 requires the Complainant to make a "general statement of the kind and character of the material and labor furnished".
5. Subsection 6 applies to subcontractors and therefore does not apply to this mechanics' lien.

WHEREFORE, the Claimant respectfully requests that the Owners' Preliminary Objections be overruled and stricken.

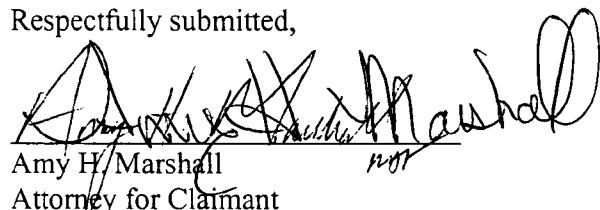
III. TITLE 49 P.S. § 1505 DOES NOT PERMIT PRELIMINARY OBJECTIONS ON THE BASIS THAT A PARTY FAILED TO COMPLETE CONSTRUCTION.

6. Paragraphs 1 through 5 are incorporated herein as if set forth fully below.
7. Section 1505 of Title 49 sets forth the grounds for filing preliminary objections to a mechanics' lien.
8. A party is permitted to object showing the property is exempt or immune from a lien or that a party has failed to conform to the requirements of the Mechanics' Lien Law of 1963.
9. The Owners have filed Preliminary Objections stating the Claimant did not complete construction. Although this may be brought as a defense to the enforcement action filed by the Claimant, it is not appropriate grounds for Preliminary Objections.

WHEREFORE, the Claimant respectfully requests that the Owners' Preliminary Objections be overruled and stricken.

Respectfully submitted,

2-24-04
Date


Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, PC
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

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

SCOTT B. COWFER

:

VS.

: NO. 03-1300-CD

BARRY and TAMMY FOX

:

O R D E R

NOW, this 25th day of February, 2004, following argument on Defendant's Preliminary Objection to Mechanic's Lien Claim, it is the ORDER of this Court that hearing shall be held on the 12th day of March, 2004, at 9:30 a.m. on the sole issue of whether the claimant, Scott B. Cowfer, was the general contractor in this matter. One hour has been allotted for this hearing.

BY THE COURT,


Judge

FILED

FEB 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

SCOTT B. COWFER

:

-VS-

: No. 03-1300-CD

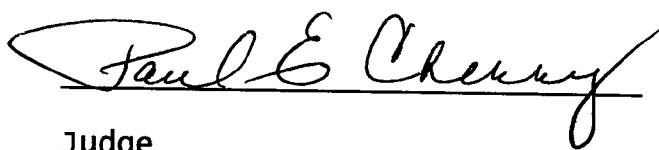
BARRY and TAMMY FOX

:

O R D E R

NOW, this 12th day of March, 2004, following hearing on the issue as to whether the Plaintiff, Scott B. Cowfer, served as general contractor in the construction of a home owned by the Defendants, it is the ORDER of this Court that counsel shall file a letter brief by no later than April 12, 2004. Counsel shall have an additional five (5) days thereafter to file a reply brief, if desired.

BY THE COURT,



Judge

FILED

MAR 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

CR

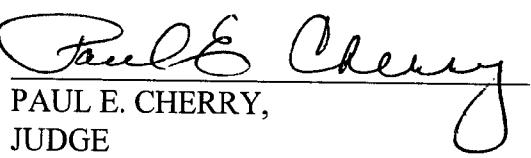
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

SCOTT B. COWFER, :
Contractor, Claimant :
V. : NO. 03-1300-CD
BARRY AND TAMMY FOX :
Husband and Wife, Owners :
:

ORDER

AND NOW, this 11th day of May, 2004, following the taking of testimony on Husband and Wife, Owners, Preliminary Objections to Mechanics Lien Claim and upon consideration of briefs filed by the parties to said Preliminary Objections, it is the ORDER of this Court that said Preliminary Objections are hereby GRANTED. It is the further ORDER of this Court that Claimant shall more specifically plead the averments of his Mechanics Lien claim within twenty (20) days of the date of this Order.

BY THE COURT,


PAUL E. CHERRY,

JUDGE

FILED

MAY 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

SCOTT B. COWFER, :
Contractor, Claimant :
V. : NO. 03-1300-CD
BARRY AND TAMMY FOX :
Husband and Wife, Owners :
:

ORDER

AND NOW, this 11th day of May, 2004, following the taking of testimony and in consideration of briefs filed by the parties, it is the ORDER of this Court that Claimants Preliminary Objections to Owners Preliminary Objections to the Mechanics Lien are hereby DISMISSED.

BY THE COURT,


PAUL E. CHERRY,
JUDGE.

FILED

MAY 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

FILED

JUN 01 2004

SCOTT B. COWFER, :
Contractor, Claimant :
vs. :
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :

William A. Shaw
Prothonotary/Clerk of Courts

No. 03-1300-CD

MECHANIC'S LIEN CLAIM

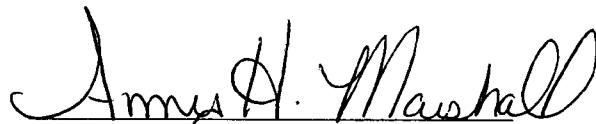
CLAIMANT, Scott B. Cowfer, contractor, through his counsel, The Mazza Law Group, P.C. and Amy H. Marshall, files this claim against the improvements and property in Clearfield County, PA, described in Exhibit "A", hereto, for the payment of debt due to claimant as a contractor for labor furnished by Claimant in the construction of the Owners' residence. In support of the claim, the Claimant makes the following statement:

1. The Owners of the property are Barry A. and Tammy Fox, with an address at 106 Walnut Street, Smithmill, PA 16680.
2. The property which is subject to this claim is the Owners' residence at the aforesaid address.
3. The Parties had an oral agreement whereby the Owners provided the materials to complete the construction. The Contractor provided labor at an agreed upon price of \$24,700.00. Exhibit "B", hereto attached is the proposal executed by the parties dated March 28, 2003.
4. The labor provided by the claimant pursuant to the agreement was performed on the following dates: March 26th, 28th, and 31st, April 2nd, 3rd, 4th, 9th, 10th, 13th, 14th, 16th, 20th, and 21st, May 19th, 28th, 29th, and 30th, June 2nd, 3rd, 5th, 6th, 9th, 10th, 11th, 12th, 14th, 15th, 16th, 17th, 18th, 23rd, 24th, 25th, 26th, 27th, and 30th, July 1st, 2nd, and 3rd all in the year 2003.

5. The labor performed includes the following items but is not exclusive of all work completed: setting roof trusses, framing walls, drywall installation, installation of banisters, installation of oak steps, installation of siding, and pouring concrete floor in garage.
5. The Owners made an initial down payment of \$2,000.00 and one additional payment of \$4,000.00.
6. The Owners later agreed to pay an additional \$650.00 to have the concrete floor poured in the garage, which was in addition to the original contract price of \$24,700.00.
7. The balance remaining to be paid pursuant to the agreement is \$19,350.00.
8. The contractor last worked at the residence during the week ending July 4, 2003.
9. There is due and owing the amount of \$19,350.00, for which this claim is made.

Respectfully submitted,

Date: 5/28/04



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, PC
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

ALL those certain pieces or parcels of land situated, lying and being in Gulich Township, Clearfield County, Pennsylvania, bounded and described as follows:

THE FIRST THEREOF: BEGINNING at a post on the North side of Patton Street and on the Western side of an unnamed Street; thence along the Western side of said unnamed Street North Fifty-eight degrees Thirty-nine minutes West (N 58° 39' W) Four Hundred Thirty-five and Six tenths (435.6') feet to a point; thence by land of Ramey Estate South Thirty-one degrees Twenty-one minutes West (S 31° 21' W) Two Hundred (200') feet to other land of said Grantors; thence by Grantors' land South Fifty-eight degrees Thirty-nine minutes East (S 58° 39' E) Four Hundred Thirty-five and Six tenths (435.6') feet to a post on the Northern side of Patton Street; thence along the Northern side of Patton Street North Thirty-one degrees Twenty-one minutes East (N 31° 21' E) Two Hundred (200') feet to the post at the place of beginning. CONTAINING Two (2) acres, more or less. Being further identified by Clearfield County Assessment No. 118-K16-513-00007.

EXCEPTING and RESERVING such exceptions and reservations as are contained in prior deeds in the chain of title.

BEING the same premises as were conveyed unto Wasco Warholic, also known as Wasco Worcolick, also known as Wasco Warholic, by deed of Paul Santoro, et ux, dated April 23, 1920, and entered for record in Clearfield County Deed Book Volume 242, Page 286.

THE SECOND THEREOF: BEGINNING at a post corner on the Northwestern side of an alley and which post is South Thirty degrees Forty-four minutes

vol 1370 PAGE 150

West (S 30° 44' W) One Hundred (100') feet from the Northwestern corner of an intersecting street; thence along land of the Ramey Estate North Fifty-nine degrees Sixteen minutes West (N 59° 16' W) Seven Hundred Thirty and One-tenth (730.1') feet to a post corner on the Eastern side of the right of way line of the Janesville Branch of the Pennsylvania Railroad; thence along or near the line of the said right of way South Seventeen degrees Thirty-two minutes West (S 17° 32' W) Two Hundred Five and Two tenths (205.2') feet to a post corner of land sold to Metro Berezonsky; thence by said land South Fifty-nine degrees Sixteen minutes East (S 59° 16' E) Six Hundred Eighty-three and Seven tenths (683.7') feet to a post corner on the Northwestern side of an alley; thence along the Northwestern side of said alley North Thirty degrees Forty-four minutes East (N 30° 44' E) Two Hundred (200') feet to a post corner and the place of beginning. CONTAINING Three and Twenty-three hundredths (3.23) acres, and being part of tract number 11 of the Ramey Estate lands. BEING further identified by Clearfield County Assessment Number 118-K16-513-00016.

EXCEPTING and RESERVING such exceptions and reservations as are contained in prior deeds in the chain of title.

BEING the same premises as were conveyed to Wasco Worcolick, also known as Wasco Warholic, also known as Wasco Warholic, by deed of David K. Ramey dated July 10, 1924, and entered for record in Clearfield County Deed Book Volume 339, Page 247.

The said Wasco Warholic, a widower, also known as Wasco Worcolick, also known as Wasco Warholic, died testate on February 8, 1968, and by his Last Will and Testament dated October 22, 1963, and duly entered for probate in Clearfield County Will Book 13, Page 565, devised his entire estate to his son, Michael Warholic, Grantor herein.

EXHIBIT

A

EXHIBIT

B

PROPOSAL

No. _____

Date 3-28-03

Sheet No. _____

Proposal Submitted To:

Name Barry Fox
 Street Po Bx 132.
 City Beccaria 16616 State Pa.
 Phone 378-8917.

Work To Be Performed At:

Street SCOTT B. COWFER
1359 EAST BELL HOLLOW LANE
PORT MATILDA, PA 13870
 City _____ State _____
 Date of Plans 1-800-684-7003 Architect _____

We hereby propose to furnish the materials and perform the labor necessary for the completion of

① \$2000.00 Down on START of Job. Rest will be made in payments

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 [\$24,700.00]. with payments to be made as follows:

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

Respectfully submitted

Scott B. Cowfer

Per

Note-This proposal may be withdrawn by us if not accepted within 30 days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date 3-28-03

Signature X Barry Fox
 Signature Scott B. Cowfer

MAY-26-2004 WED 12:30 PM MAZZA LAW OFFICE

FAX NO.

P. 01

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

VERIFICATION

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

5-25-04
Date

Scott B. Cowfer
Scott B. Cowfer

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

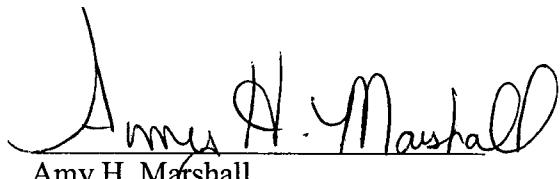
SCOTT B. COWFER, :
Contractor, Claimant :
vs. :
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :
No. 03-1300-CD

CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the foregoing Mechanic's Lien, was served on Frederick M. Neiswender, Esquire, Counsel for parties of record, in the above-entitled matter, via facsimile and by depositing the same within the custody of the United States Postal Service, first class postage prepaid, on May 28, 2004, addressed as follows:

Frederick M. Neiswender, Esquire
501 E. Market Street, Suite 3
Clearfield, PA 16830

Date: 5/28/04



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, P.C.
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION - LAW)

SCOTT B. COWFER,
Contractor, Claimant,

vs. : No. 03-1300-CD

BARRY AND TAMMY FOX,
Husband and Wife, Owners.

: Type of case: Civil Action - Law

: Type of pleading: Preliminary Objections
to Mechanics' Lien Claim.

: Filed on behalf of: Owners.

: Counsel for Owners:
: Frederick M. Neiswender, Esquire
: Supreme Court No. 74456
: 501 East Market Street, Suite 3
: Clearfield, Pennsylvania 16830
: (814) 765-6500

FILED

JUL 02 2004

11:30 am

William A. Shaw

Prothonotary/Clerk of Courts

3 CENT TO COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION – LAW)

SCOTT B. COWFER,
Contractor, Claimant,

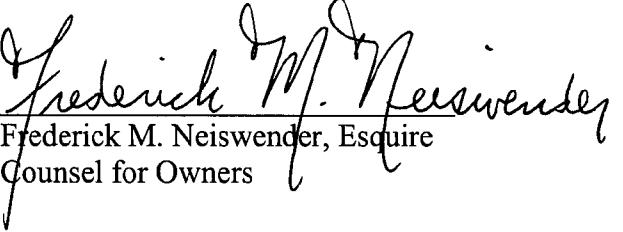
VS. : No. 03-1300-CD

BARRY AND TAMMY FOX,
Husband and Wife, Owners.

NOTICE TO PLEAD

To: Scott B. Cowfer:

You are hereby notified to file written response to the enclosed Preliminary Objections to Mechanics' Lien Claim within twenty (20) days from service hereof or a judgment may be entered against you.


Frederick M. Neiswender, Esquire
Counsel for Owners

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION – LAW)

SCOTT B. COWFER, :
Contractor, Claimant, :
: vs. : No. 03-1300-CD
BARRY AND TAMMY FOX, :
Husband and Wife, Owners. :
:

PRELIMINARY OBJECTIONS TO MECHANICS' LIEN
CLAIM PURSUANT TO 49 PA. STAT. ANN. § 1505

AND NOW, come the Owners, Barry A. Fox and Tammy D. Fox, Husband and Wife, by and through their attorney, FREDERICK M. NEISWENDER, ESQUIRE, and file these Preliminary Objections to Mechanics' Lien Claim as follows:

I. PRELIMINARY OBJECTION RAISING CLAIMANT'S FAILURE TO PLEAD HIS
MECHANICS' LIEN CLAIM WITH SUFFICIENT SPECIFICITY

1. In paragraph 3 of the Mechanics' Lien Claim, the Claimant states that an oral agreement was entered into between he and the Owners of the subject property whereby the Owners were to provide materials to complete construction and Claimant was to provide labor at an agreed upon price of \$24,700.00.
2. The Owners believe and therefore aver that the terms of the oral agreement provided that the Claimant would be paid for each phase of construction upon its completion and that the Owners were not obligated to pay for any phase prior to its completion.

3. The Mechanics' Lien Claim filed by the Claimant does not state with sufficient specificity, as required by 49 Pa. Stat. Ann. § 1530, the nature of the work completed or set forth an itemized list of hours worked and the dates when the work was performed.

4. As a result, the Claimant cannot justify filing his claim in the amount of \$19, 350.00.

5. Claimant's Mechanics' Lien Claim lacks sufficient specificity to apprise Owners of the issues to be litigated and to allow them to adequately prepare and assert defenses to Claimant's allegations.

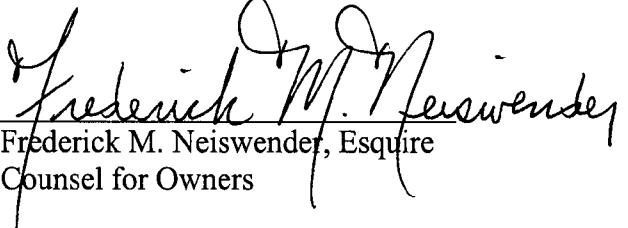
WHEREFORE, Owners respectfully request that this Court order Claimant to more specifically plead the averments of his Mechanics' Lien Claim.

II. PRELIMINARY OBJECTION RAISING CLAIMANT'S FAILURE TO COMPLETE WORK AS AGREED UPON PRIOR TO FILING CLAIM

6. Paragraphs 1 through 5 are incorporated herein as if set forth fully below.
7. As set forth above, the Claimant states that an oral agreement was entered into between he and the Owners of the subject property whereby the Owners were to provide materials to complete construction and Claimant was to provide labor at an agreed upon price of \$24,700.00.
8. The Owners believe and therefore aver that the terms of the oral agreement provided that the Claimant would be paid for each phase of construction upon its completion and that the Owners were not obligated to pay for any phase prior to its completion.
9. The Owners believe and therefore aver that the \$6,000.00 paid to Claimant was payment in full for the work completed on Owners' residence.
10. Claimant states in paragraph 7 of the Mechanics' Lien Claim that he last worked on the residence during the week ending July 4, 2003.
11. However, Claimant had not completed any additional work by July 4, 2003 and did not return to the residence to complete the work.
12. Claimant did not inform the Owners that he would not be returning to the residence to complete the work agreed upon prior to filing the Mechanics' Lien Claim.
13. Claimant left various phases of construction incomplete and is not entitled to the payment of additional sums under the oral agreement between Claimant and Owners.
14. Therefore, Claimant cannot justify an amount due and owing of \$19, 350.00 as set forth in paragraph 8 of the Mechanics' Lien Claim filed in the matter.

WHEREFORE, Owners respectfully request that this Honorable Court grant their Preliminary Objections and strike Claimant's Mechanics' Lien Claim for failure to complete the work agreed upon prior to filing the claim.

Respectfully submitted,



Frederick M. Neiswender, Esquire
Counsel for Owners

BARRY A.FOX and TAMMY D. FOX hereby state that they are the Defendants in this action and that the statements of fact made in the foregoing Preliminary Objections are true and correct upon personal knowledge. The undersigned understand that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

DATE: 1/5/04



BARRY A. FOX

DATE: 1/5/04



TAMMY D. FOX

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION – LAW)

SCOTT B. COWFER,

Contractor, Claimant,

vs.

No. 03-1300-CD

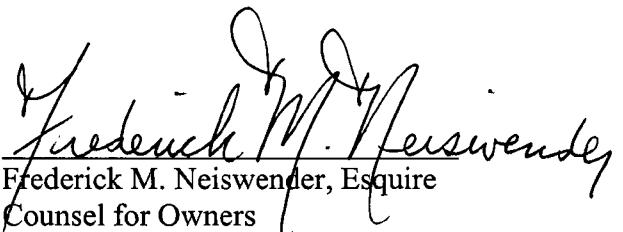
BARRY AND TAMMY FOX,

Husband and Wife, Owners.

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Preliminary Objections to Mechanics' Lien Claim was made on July 2, 2004, by mailing, first class, postage prepaid, a true copy to the following persons, at the following addresses:

Amy H. Marshall, Esquire
The Mazza Law Group, PC
1315 South Allen Street, Suite 302
State College, Pennsylvania 16801-5923


Frederick M. Neiswender, Esquire
Counsel for Owners
501 East Market Street, Suite 3
Clearfield, Pennsylvania 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

FILED 

JUL 21 2004

William A. Shaw
Prothonotary Clerk of Courts

SCOTT B. COWFER, :
Contractor, Claimant :
vs. :
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :
No. 03-1300-CD

CLAIMANT'S REPLY TO OWNERS PRELIMINARY OBJECTIONS TO THE
MECHANICS' LIEN

CLAIMANT, Scott B. Cowfer, through his Counsel, Amy H. Marshall, Esquire, files
Claimant's Reply to Owners Preliminary Objections to Mechanics' Lien.

**II. CLAIMANT HAS COMPLIED WITH 49 P.S. § 1503(5) TO PLEAD WITH
DETAIL THE CONTENTS OF THE MECHANICS' LIEN.**

1. The Claimant was a contractor as defined at 49 P.S. § 1201(4) in that he had a direct contractual relationship with the Owners of the property. The Claimant provided labor for the construction of the residence at 106 Walnut Street, Smithmill, PA 16680.
2. Title 49 P.S. § 1503 sets forth the requirements for the content of a Mechanics' Lien.
3. As a contractor, the Claimant is required to comply with 49 P.S. § 1503(5).
4. Subsection 5 requires the Complainant to make a "general statement of the kind and character of the material and labor furnished".
5. The Claimant has provided the appropriate detail in the Mechanics' Lien setting forth a general statement of the work performed and the dates that the work took place.

WHEREFORE, the Claimant respectfully requests that the Owners' Preliminary Objections be overruled and stricken.

**III. TITLE 49 P.S. § 1505 DOES NOT PERMIT PRELIMINARY OBJECTIONS
ON THE BASIS THAT A PARTY FAILED TO COMPLETE CONSTRUCTION.**

6. Paragraphs 1 through 5 are incorporated herein as if set forth fully below.
7. Section 1505 of Title 49 sets forth the grounds for filing Preliminary Objections to a Mechanics' Lien.
8. A party is permitted to object showing the property is exempt or immune from a lien or that a party has failed to conform to the requirements of the Mechanics' Lien Law of 1963.
9. The Owners have again filed Preliminary Objections attempting to resolve the issue of work completion. This issue is appropriately addressed in the context of the enforcement action. The issue of work completion may be brought as a defense to the enforcement action filed by the Claimant, it is not appropriate grounds for Preliminary Objections. The Owners were served with the Complaint on December 8, 2003.

WHEREFORE, the Claimant respectfully requests that the Owners' Preliminary Objections be overruled and stricken and the Owners be directed to Answer the Complaint served on the Owners December 8, 2003.

Date 7/20/04

Respectfully submitted,



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, PC
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

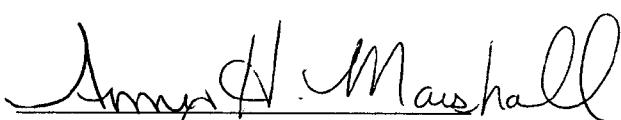
SCOTT B. COWFER,	:	
Contractor, Claimant	:	
	:	
vs.	:	No. 03-1300-CD
	:	
BARRY AND TAMMY FOX,	:	
Husband and Wife, Owners	:	

CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the foregoing Claimant's Reply to Owners Preliminary Objections to the Mechanic's Lien, was served on Frederick M. Neiswender, Esquire, Counsel for parties of record, in the above-entitled matter, via facsimile and by depositing the same within the custody of the United States Postal Service, first class postage prepaid, on July 20, 2004, addressed as follows:

Frederick M. Neiswender, Esquire
501 E. Market Street, Suite 3
Clearfield, PA 16830

Date: 7/20/04


Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, P.C.
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

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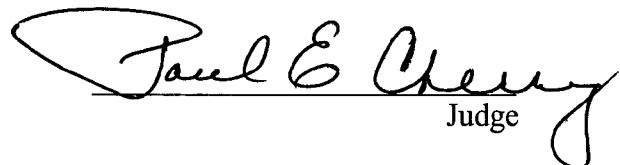
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION – LAW)

SCOTT B. COWFER, :
Contractor, Claimant, :
vs. :
: No. 03-1300-CD
BARRY AND TAMMY FOX, :
Husband and Wife, Owners. :
:

RULE RETURNABLE

NOW, this 6th day of August 2004, upon consideration of Preliminary Objections to Mechanics' Lien Claim, a Rule is hereby issued upon the Claimant, Scott B. Cowfer to show cause why the Preliminary Objections should not be granted. Rule Returnable for Answer by the Claimant and hearing on said Preliminary Objections to be held on the 20 day of September, 2004, at 9:00 o'clock A. m. in Courtroom No. 2 of the Clearfield County Courthouse.

BY THE COURT,


Paul E. Cherry
Judge

FILED

AUG 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

SCOTT B. COWFER	:	
V.	:	NO. 03-1300-CD
BARRY and TAMMY FOX	:	

ORDER

AND NOW, this 20th day of September, 2004, the Court being advised that counsel for Plaintiff, Amy M. Marshall, was not properly served with notice of hearing scheduled for Thursday, September 23, 2004 and counsel for Plaintiff, Amy M. Marshall, Esquire, having a conflict with the scheduled date and time, it is the ORDER of this Court that hearing be and is hereby continued until the 27 day of October, 2004, beginning at 9:30 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse.

BY THE COURT,

Paul E. Cherry
PAUL E. CHERRY,
JUDGE

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0 3.17 BA. 2cc atty Marshall
, 2cc atty Newlander
SEP 21 2001

(PA)

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

SCOTT B. COWFER

:

-vs-

: No. 03-1300-CD

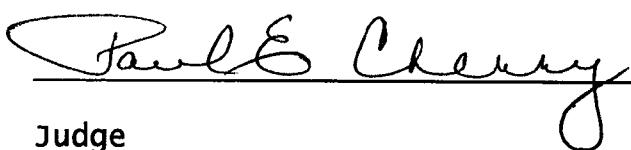
BARY and TAMMY FOX

:

O R D E R

NOW, this 27th day of October, 2004, following argument on Preliminary Objections filed on behalf of Bary and Tammy Fox, husband and wife/owners, it is the ORDER of this Court that said Preliminary Objections be and are hereby dismissed. Claimant, Scott B. Cowfer, shall file an amended complaint within no more than twenty (20) days from this date, pleading with specificity the number of hours devoted to work performed, as well as costs thereof.

BY THE COURT,


Judge

ICC Atlys:
10/12/43/204 A. Marshall
OCT 28 2004 Neiswender

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW

SCOTT B. COWFER, :
Contractor, Claimant :
vs. :
: No. 03-1300-CD
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :
:

FILED

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2004
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Prothonotary/Clerk of Court

AMENDED COMPLAINT

2 fm to Attn

1. Plaintiff, Scott B. Cowfer, is an individual with an address at 1359 Bell Hollow Road, Port Matilda, PA 16870.
2. Defendant's are individuals with an address at 106 Walnut Street, Smithmill, PA 16680.
3. The Plaintiff, Scott Cowfer, was hired by the Defendants to provide "labor only" for the construction of their home at 106 Walnut Street, Smithmill, PA.
4. Plaintiff did not sign a release and waiver of Mechanic's Lien for the work done at 106 Walnut Street, Smithmill, PA.
5. Plaintiff filed a Mechanic's Lien claim on September 3, 2003, in the Court of Common Pleas of Clearfield County, No. 2003-1300, a copy of which is attached as Exhibit A. A revised lien was filed with the Court on June 1, 2004, a copy of which is hereto attached as Exhibit B.
6. Pursuant to the agreement between the parties, the Plaintiff provided labor for the construction of the home.
7. The Plaintiff began construction on the Defendants' home on March 26, 2003. The last day work was performed was July 3, 2003.
8. In total, there were twelve weeks in which the Plaintiff performed work for the Defendants.
9. The Plaintiff had a crew of men providing labor on the construction site for the twelve week period. The following men worked on the job: Art Hoover, Mike Eutzy, John Aiken, Ron Gummo, Rick Day, Jamie Harding, Ron Dixon, Wilbur Miller, Chris Spanek, Dwayne Day, Phil Burkholder and Scott Cowfer.
10. The number of man hours worked over the twelve weeks, excluding time spent on the job by Scott Cowfer is as follows: Week 1- 30.5 hours, Week 2- 95 hours, Week 3 - 37 hours, Week 4- 61 hours, Week 5- 30 hours, Week 6- 25.5 hours, Week 7- 130 hours, Week 8- 97.5 hours, Week 9- 99.5 hours, Week 10- 101.5 hours, Week 11- 95.5 hours, Week 12- 71.5 hours.
11. The total payroll cost incurred in by the Plaintiff to provide these man hours was \$13,340.50.
12. During the twelve week period of construction the following items were completed:
 - House completely framed
 - Roof trusses set
 - Roofing installed
 - Drywall completed
 - Kitchen cabinets installed
 - Oak stair case and banister installed

- Exterior finishes and trim completed
- Garage completed, including poured concrete floor

13. Plaintiff was not responsible for the installation or completion of electrical, plumbing, heating, painting, staining, insulation or flooring.

14. The agreed upon price for "labor only" was broken down into the following categories and pricing:

- Framing and roofing \$6,581.00
- Installation of doors and windows \$2,122.00
- Installation of siding, soffit and fascia \$5,126.00
- Installation and finishing of drywall \$4,827.00
- Installation of kitchen cabinets \$1,000.00
- Installation of exterior and interior trim \$1544.00
- Garage \$3,500.00

15. Plaintiff was delayed during the construction project. For the weeks ending May 2, 2003, May 9, 2003, and May 16, 2003, the Plaintiff was unable to work at the site. The Plaintiff was waiting for the Defendant, Barry Fox to complete the wiring and insulation projects.

16. When the Plaintiff stopped work on July 3, 2003, two projects needed to be completed. The porch railings needed to be installed and the interior doors needed to be hung. The correct materials were not on site to complete the projects.

17. The Defendants never contacted the Plaintiff when the materials arrived to complete the work.

18. The Defendants never contacted the Plaintiff and indicated that any of the work performed by Plaintiff and his crew had not been completed.

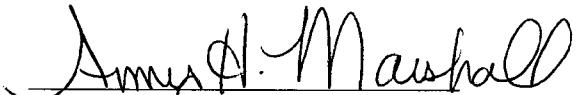
19. To date, Plaintiff does not know what work if any the Defendants' claim was not completed.

20. Pursuant to the terms of the agreement, the Plaintiff is owed \$19,350.00 for the work performed.

WHEREFORE, Plaintiff demands judgment to be entered against the Defendants in the sum of \$19,350.00, with interest and costs.

Respectfully submitted,

11/10/04
Date



Amy H. Marshall

Attorney for Claimant

Attorney ID #74852

Babst, Calland, Clements & Zomnir, P.C.

101 Innovation Blvd., Suite 206

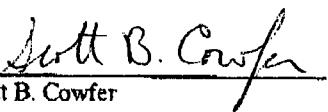
State College, PA 16803

Telephone: (814) 867-8055

Facsimile: (814) 231-8000

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CENTREVERIFICATION

I, Scott B. Cowfer, verify that the statements made in the foregoing Amended Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Date: 11-9-04

Scott B. Cowfer

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW

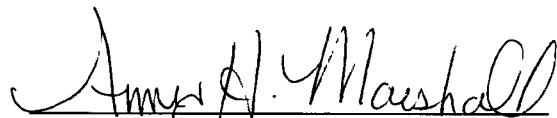
SCOTT B. COWFER, :
Contractor, Claimant :
:
vs. : No. 03-1300-CD
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :

CERTIFICATE OF SERVICE

I, Amy H. Marshall, hereby certify that a true and correct copy of the foregoing Amended Complaint, was served on Frederick M. Neiswender, Esquire, Counsel for parties of record, in the above-entitled matter, via the United State Postal Service, first class postage prepaid, on November 10, 2004, addressed as follows:

Frederick M. Neiswender, Esq.
501 East Market Street, Suite 3
Clearfield, PA 16830

Date: 11/10/04



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
Babst, Calland, Clements & Zomnir, P.C.
101 Innovation Blvd., Suite 206
State College, PA 16803
Telephone: (814) 867-8055
Facsimile: (814) 231-8000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

SCOTT B. COWFER, :
Contractor, Claimant :
:
vs. : No. 03-1300-CD
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :
:

AFFIDAVIT OF SERVICE

I, Amy H. Marshall, Esq., being duly sworn according to law depose and say that, on September 10, 2003, the Clearfield County Sheriff served the attached Notice of Filing of Mechanics' Lien Claim on Barry and Tammy Fox, the owners of the property against which the claim was filed at 106 Walnut Street, Smithmill, PA 16680.

Date: 9/23/03

Amy H. Marshall
Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, P.C.
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

EXHIBIT

A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

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FILED

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SEP 03 2003

William A. Strat
Prothonotary Clerk of Courts

SCOTT B. COWFER, :
Contractor, Claimant :
:
vs. :
:
BARRY AND TAMMY FOX. :
Husband and Wife, Owners :

No. 03-1300-C

MECHANIC'S LIEN CLAIM

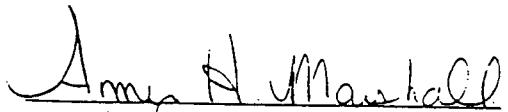
CLAIMANT, Scott B. Cowfer, contractor, through his counsel, The Mazza Law Group, P.C. and Amy H. Marshall, files this claim against the improvements and property in Clearfield County, PA, described in Exhibit "A", hereto, for the payment of debt due to claimant as a contractor for labor furnished by Claimant in the construction of the Owners' residence. In support of the claim, the Claimant makes the following statement:

1. The Owners of the property are Barry A. and Tammy Fox, with an address at 106 Walnut Street, Smithmill, PA 16680.
2. The property which is subject to this claim is the Owners' residence at the aforesaid address.
3. The Parties had an oral agreement whereby the Owners provided the materials to complete the construction. The Contractor provided labor at an agreed upon price of \$24,700.00.
4. The Owners made an initial down payment of \$2,000.00 and one additional payment of \$4,000.00.

5. The Owners later agreed to pay an additional \$650.00 to have the concrete floor poured in the garage, which was in addition to the original contract price of \$24,700.00.
6. The balance remaining to be paid pursuant to the agreement is \$19,350.00.
7. The contractor last worked at the residence during the week ending July 4, 2003.
8. There is due and owing the amount of \$19,350.00, for which this claim is made.

Respectfully submitted.

Date: 8/26/03



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, PC
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

VERIFICATION

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

8-26-03-
Date

Scott B. Cowfer
Scott B. Cowfer

ALL those certain pieces or parcels of land situate, lying and being in Culich Township, Clearfield Co., Pennsylvania, bounded and described as follows:

THE FIRST THEREOF: BEGINNING at a post on the North side of Patton Street and on the Western side of an unnamed Street; thence along the Western side of said unnamed Street North Fifty-eight degrees Thirty-nine minutes West (N 58° 39' W) Four Hundred Thirty-five and Six tenths (435.6') feet to a point; thence by land of Ramsey Estate South Thirty-one degrees Twenty-one minutes West (S 31° 21' W) Two Hundred (200') feet to other land of said Grantors; thence by Grantors' land South Fifty-eight degrees Thirty-nine minutes East (S 58° 39' E) Four Hundred Thirty-five and Six tenths (435.6') feet to a post on the Northern side of Patton Street; thence along the Northern side of Patton Street North Thirty-one degrees Twenty-one minutes East (N 31° 21' E) Two Hundred (200') feet to the post at the place of beginning. CONTAINING Two (2) acres, more or less. Being further identified by Clearfield County Assessment No. 118-K16-513-00007.

EXCEPTING and RESERVING such exceptions and reservations as are contained in prior deeds in the chain of title.

BEING the same premises as were conveyed unto Wasco Warholic, also known as Wasco Worcolick, also known as Wasco Warholic, by deed of Paul Santoro, et ux, dated April 23, 1920, and entered for record in Clearfield County Deed Book Volume 242, Page 286.

THE SECOND THEREOF: BEGINNING at a post corner on the Northwestern side of an alley and which post is South Thirty degrees Forty-four minutes

Vol 1370, pg 150

West (S 30° 44' W) One Hundred (100') feet from the Northwestern corner of an intersecting street; thence along land of the Ramsey Estate North Fifty-nine degrees Sixteen minutes West (N 59° 16' W) Seven Hundred Thirty and One-tenth (730.1') feet to a post corner on the Eastern side of the right of way line of the Jangsville Branch of the Pennsylvania Railroad; thence along or near the line of the said right of way South Seventeen degrees Thirty-two minutes West (S 17° 32' W) Two Hundred Five and Two tenths (205.2') feet to a post corner of land sold to Metro Berezovsky; thence by said land South Fifty-nine degrees Sixteen minutes East (S 59° 16' E) Six Hundred Eighty-three and Seven tenths (683.7') feet to a post corner on the Northwestern side of an alley; thence along the Northwestern side of said alley North Thirty degrees Forty-four minutes East (N 30° 44' E) Two Hundred (200') feet to a post corner and the place of beginning. CONTAINING Three and Twenty-three hundredths (3.23) acres, and being part of tract number 11 of the Ramsey Estate lands. BEING further identified by Clearfield County Assessment Number 118-K16-513-00016.

EXCEPTING and RESERVING such exceptions and reservations as are contained in prior deeds in the chain of title.

BEING the same premises as were conveyed to Wasco Worcolick, also known as Wasco Warholic, also known as Wasco Warholic, by deed of David K. Ramsey dated July 10, 1924, and entered for record in Clearfield County Deed Book Volume 339, Page 247.

The said Wasco Warholic, a widower, also known as Wasco Worcolick, also known as Wasco Warholic, died testate on February 8, 1968, and by his Last Will and Testament dated October 22, 1963, and duly entered for probate in Clearfield County Will Book 13, Page 565, devised his entire estate to his son, Michael Warholic, Grantor herein.

EXHIBIT

A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

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

JUN 01 2004

SCOTT B. COWFER, :
Contractor, Claimant :
:
vs. :
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :

Attest.

William L. Ober
Prothonotary/
Clerk of Courts

No. 03-1300-CD

MECHANIC'S LIEN CLAIM

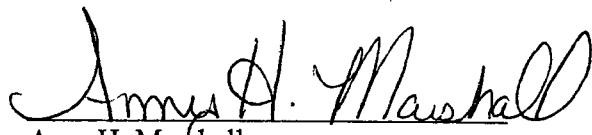
CLAIMANT, Scott B. Cowfer, contractor, through his counsel, The Mazza Law Group, P.C. and Amy H. Marshall, files this claim against the improvements and property in Clearfield County, PA, described in Exhibit "A", hereto, for the payment of debt due to claimant as a contractor for labor furnished by Claimant in the construction of the Owners' residence. In support of the claim, the Claimant makes the following statement:

1. The Owners of the property are Barry A. and Tammy Fox, with an address at 106 Walnut Street, Smithmill, PA 16680.
2. The property which is subject to this claim is the Owners' residence at the aforesaid address.
3. The Parties had an oral agreement whereby the Owners provided the materials to complete the construction. The Contractor provided labor at an agreed upon price of \$24,700.00. Exhibit "B", hereto attached is the proposal executed by the parties dated March 28, 2003.
4. The labor provided by the claimant pursuant to the agreement was performed on the following dates: March 26th, 28th, and 31st, April 2nd, 3rd, 4th, 9th, 10th, 13th, 14th, 16th, 20th, and 21st, May 19th, 28th, 29th, and 30th, June 2nd, 3rd, 5th, 6th, 9th, 10th, 11th, 12th, 14th, 15th, 16th, 17th, 18th, 23rd, 24th, 25th, 26th, 27th, and 30th, July 1st, 2nd, and 3rd all in the year 2003.

5. The labor performed includes the following items but is not exclusive of all work completed: setting roof trusses, framing walls, drywall installation, installation of banisters, installation of oak steps, installation of siding, and pouring concrete floor in garage.
5. The Owners made an initial down payment of \$2,000.00 and one additional payment of \$4,000.00.
6. The Owners later agreed to pay an additional \$650.00 to have the concrete floor poured in the garage, which was in addition to the original contract price of \$24,700.00.
7. The balance remaining to be paid pursuant to the agreement is \$19,350.00.
8. The contractor last worked at the residence during the week ending July 4, 2003.
9. There is due and owing the amount of \$19,350.00, for which this claim is made.

Respectfully submitted,

Date: 5/28/04



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, PC
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

EXHIBIT

PROPOSAL

Tables

B

No.

Date

3-28-03

Sheet No.

Proposal Submitted To:

Name Barry Fox
 Street Po Bx 132
 City Buccaria 1616 State Pa.
 Phone 378-8917

Work To Be Performed At:

SCOTT B. COWFER
 1359 EAST BELL HOLLOW LANE
 Street PORT MATILDA, PA 15870
 City State
 Date of Plans 1-800-684-7003 Architect

We hereby propose to furnish the materials and perform the labor necessary for the completion of

① \$2000.00 Down on START of Job. Rest will
 be made in payments

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 (\$ 24,700.00).
 with payments to be made as follows:

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

Respectfully submitted

Scott B. Cowfer

Per

Note-This proposal may be withdrawn by us if not accepted
 within 30 days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature *Barry Fox*Signature *Scott B. Cowfer*Date 3-28-03

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

SCOTT B. COWFER, :
Contractor, Claimant, :
vs. : No. 03-1300-CD
BARRY FOX and TAMMY FOX :
Husband and Wife, Owners. :
: Type of case: Mechanics' Lien
: Type of pleading: Answer to Amended
: Complaint and New Matter
: Filed on behalf of: Owners,
: Barry Fox and Tammy Fox
: Counsel for Owners:
: Frederick M. Neiswender, Esquire
: Supreme Court No. 74456
: 501 East Market Street, Suite 3
: Clearfield, Pennsylvania 16830
: (814) 765-6500

FILED 3cc
01/31/05 Atty
FEB 01 2005 Neiswender
William A Shaw
Prothonotary/Clerk of Courts

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

SCOTT B. COWFER, :
Contractor, Claimant, :
:
vs. : No. 03-1300-CD
:
BARRY FOX and TAMMY FOX :
Husband and Wife, Owners. :
:

ANSWER TO AMENDED COMPLAINT AND NEW MATTER

NOW, come the Defendants, BARRY FOX and TAMMY FOX, by and through their attorney, FREDERICK M. NEISWENDER, ESQUIRE and make their Answer to Plaintiff's Amended Complaint as follows:

1. Admitted.
2. Denied. It is denied that Defendants reside at 106 Walnut Street, Smithmill, PA 16680. Defendants' correct address is 999 Walnut Street, Smithmill, PA 16680.
3. Admitted in part, Denied in part. It is admitted that Defendants hired Plaintiff to provide labor for the construction of their home. It is denied that Defendants reside at 106 Walnut Street, Smithmill, PA 16680.
4. Denied. It is denied that Plaintiff did not sign a release and waiver of Mechanics' Lien for the work done at Defendants' residence.
5. Admitted.
6. Admitted in part, Denied in part. It is admitted that Plaintiff provided some labor on Defendants' residence. It is denied that Plaintiff provided that amount of labor agreed upon by the parties. Defendants demand strict proof thereof.

7. Admitted.
8. Denied. It is denied that Plaintiff performed work for the Defendants for or during twelve weeks. Defendants demand strict proof thereof.
9. Neither Admitted, nor Denied. Defendants do not have sufficient knowledge to respond to the averment made by Plaintiff because Defendants are not familiar with all of the names of the persons referred to by Plaintiff. It is denied that all of these people worked on the Defendants' residence at the same time. Defendants demand strict proof thereof.
10. Denied. It is denied that the number of man hours worked over the period stated by Plaintiff is as follows: Week 1-30.5 hours, Week 2-95 hours, Week 3-37 hours, Week 4-61 hours, week 5-30 hours, Week 6-25.5 hours, Week 7-130 hours, Week 8-97.5 hours, Week 9-99.5 hours, Week 10-101.5 hours, Week 11-95.5 hours, Week 12-71.5 hours. Defendants demand strict proof thereof.
11. Denied. It is denied that the total payroll cost incurred by the Plaintiff to provide these man-hours was \$13,340.50. Defendants demand strict proof thereof.
12. Denied. It is denied that Plaintiff completed the following items:
 - House completely framed
 - Roof trusses set
 - Roofing installed
 - Drywall completed
 - Kitchen cabinets installed
 - Oak staircase and banister installed
 - Exterior finishes and trim completed
 - Garage completed, including poured concrete floorDefendants demand strict proof thereof.
13. Denied. It is denied that Plaintiff was not responsible for the installation or completion of electrical, plumbing, heating, painting, staining, insulation or flooring. No written contract was entered into between Plaintiff and Defendants. Defendants demand strict proof thereof.

14. Denied. It is denied that the agreed upon price for “labor only” was broken down into the following categories and pricing:

- Framing and roofing \$6,581.00
- Installation of doors and windows \$2,122.00
- Installation of siding, soffit and fascia \$5,126.00
- Installation and finishing of drywall \$4,827.00
- Installation of kitchen cabinets \$1,000.00
- Installation of exterior and interior trim \$1,544.00
- Garage \$3,500.00

No written contract was entered into between Plaintiff and Defendants. Defendants demand strict proof thereof.

15. Denied. It is denied that Plaintiff was delayed during the construction project. Defendants demand strict proof thereof.

16. Denied. It is denied that only two projects needed to be completed by Plaintiff when worked was stopped on July 3, 2003. It is further denied that the correct materials were not on site to complete the projects. Defendants demand strict proof thereof.

17. Denied. It is denied that the Defendants never contacted Plaintiff when the materials arrived to complete the work. Defendants complained numerous times to Plaintiff regarding his failure to complete the work agreed upon.

18. Denied. It is denied that the Defendants never contacted Plaintiff regarding his failure to complete work on their residence. Defendants complained numerous times to Plaintiff regarding his failure to complete the work agreed upon.

19. Denied. It is denied that Plaintiff was unaware that work was not completed at the Defendants’ residence. Defendants complained numerous times to Plaintiff regarding his failure to complete the work agreed upon.

20. Denied. It is denied that the Defendants owe Plaintiff \$19,350.00 for the work performed.

WHEREFORE, Defendants respectfully requests this Court dismiss Plaintiff's Amended Complaint and enter judgment in favor of the Defendants.

NEW MATTER

NOW, come the Defendants, BARRY FOX and TAMMY FOX, by and through their attorney, FREDERICK M. NEISWENDER, ESQUIRE and aver as New Matter the following:

21. Defendants restate and incorporate Paragraphs 1 through 20 above as if stated at length herein.
22. No written contract was entered into between Plaintiff and Defendants.
23. Plaintiff signed a Waiver of Mechanics' Lien for Defendants' property, but Defendants never filed the waiver. *A true and correct copy is attached as Exhibit "A."*
24. Plaintiff worked sporadically on Defendants' residence over the time period set forth in Paragraph 7 of Plaintiff's Complaint.
25. Plaintiff never completed the tasks set forth in Paragraph 12 of his Complaint.
26. The prices set forth in Paragraph 14 of Plaintiff's Complaint were not agreed on by the parties. These figures were taken from a contract Defendants presented to Plaintiff, but Plaintiff refused to sign. *A true and correct copy is attached as Exhibit "B."*
27. Plaintiff stopped working because Defendants refused to pay him additional sums until each project was complete.
28. Defendants complained numerous times to Plaintiff regarding the poor workmanship of Plaintiff and his employees.
29. Plaintiff's cause of action is barred by the doctrine of accord and satisfaction.
30. Defendants acted with the consent of the Plaintiff.

31. Plaintiff's cause of action is barred by estoppel.
32. Plaintiff's cause of action is barred due to fraud perpetrated by the Plaintiff.
33. Defendants' actions were at all times justified.
34. Plaintiff's cause of action is barred by the doctrine of laches.
35. Defendants acted as a result of license given by the Plaintiff.
36. Plaintiff's cause of action is barred as a result of Defendants' payment.
37. Defendants acted with privilege at all times.
38. Plaintiff's cause of action is barred because Defendants were released from obligation.
39. Plaintiff's cause of action is barred by the statute of frauds.
40. Plaintiff's cause of action is barred by the statute of limitations.
41. Plaintiff's cause of action is barred by the doctrine of truth and waiver.

WHEREFORE, Defendants respectfully requests this Court dismiss Plaintiff's Amended Complaint and enter judgment in favor of the Defendants.

Respectfully submitted,



Frederick M. Neiswender
Counsel for Defendants

Stipulations Against Liens

Barry A. Fox and
Tammy D. Fox Owners

Vs.

SCOTT COWFER Contractor
COWFER CONTRACTING

Whereas, Barry A. Fox and Tammy D. Fox of P.O. Box 132 Beccaria, PA, 16616, is about to execute contemporaneously herewith, a contract, with SCOTT COWFER, COWFER CONTRACTING, For services and materials supplied for the erection of a residential building upon a lot of land situate at 999 Walnut Street, Smithmill, PA 16680, Gulich Township, Clearfield County, Pennsylvania, as set forth according to the deed as entered into record in Clearfield County Deed Book Volume 1370, Page 149-152

Now, MARCH 25, 2003, at the time of and immediately before the execution of the principal contract, and before any authority has been given by the said Owner to the said Contractor to commence work on the said building, or purchase materials for the same in consideration of the making of the said contract with Contractor and the further consideration of One Dollar, to contractor paid by Owner, it is agreed that no lien shall be filed against the building by the contractor, or any sub-contractor, nor by any of the material, men or workman or any other person for any labor, or materials purchased, or extra labor or materials purchased for the erection of said building, the right to file such liens being expressly waived.

Witness, our hands and seals the day and year aforesaid.

By: Scott Cowfer
SCOTT COWFER

Barry A. Fox
Barry A. Fox
Tammy D. Fox
Tammy D. Fox

Exhibit "A"

DEFENDANT'S
EXHIBIT

3/2/04 9 TTX

Building Contract

This is an agreement between Scott Cowfer Contracting and Barry & Tammy Fox for the completion of a two story home being built on the Fox's property in Smithmill, PA.

Project Costs:

Scott Cowfer will provide "Labor Only" for completion of the house as follows:

Finishing of all framing and roofing of the entire house	\$6581.00
Completion of the entire garage	\$3500.00
Installation of all doors and windows	\$2122.00
Installation of siding, soffit and fascia	\$5126.00
Installation and finishing of drywall	\$4827.00
Installation of kitchen cabinets	\$1000.00
Installation of all interior and exterior trim	\$1544.00
Job Total:	\$27400.00

In an effort to curtail costs and save time, the owners, at their discretion, may perform some of the above work thereby reducing the total cost of the project.

Project Timeline:

The following timeline will be in place for this project. Any missed dates unless, agreed upon in writing by both parties, will result in the deduction of \$100.00 / day for every day past the finished date.

Completion of the exterior portion of the home (Including siding, June 6, 2003
Soffit, fascia, windows, doors, porches, lattice and exterior trim)

Completion of the interior portion of the home (Including drywall, Finishing, installation of doors, soffit, finished stairs and tub deck) June 18, 2003

The owner will be responsible to have the following done in order to achieve the above dates:

Footers for porch supports June 2, 2003
Rough electrical and insulation June 6, 2003

Scott Cowfer Date

Barry Fox Date

Tammy Fox Date

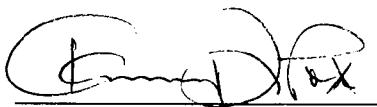
Exhibit "B"

BARRY A.FOX and TAMMY D. FOX hereby state that they are the Defendants in this action and that the statements of fact made in the foregoing Answer are true and correct upon personal knowledge. The undersigned understand that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

DATE: 2/1/2005


BARRY A. FOX

DATE: 2/1/2005


TAMMY D. FOX

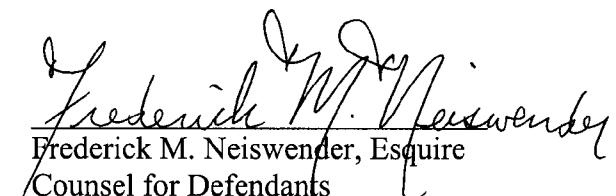
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

SCOTT B. COWFER, :
Contractor, Claimant, :
:
vs. : No. 03-1300-CD
:
BARRY FOX and TAMMY FOX :
Husband and Wife, Owners. :
:

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Answer and New Matter was made upon Scott B. Cowfer, by mailing, first class, postage prepaid, a true copy to the office of his attorney of record, Amy H. Marshall, Esquire, on February 1, 2005, at the following address:

Amy H. Marshall, Esquire
Babst, Calland, Clements & Zomnir, P.C.
101 Innovation Blvd., Suite 206
State College, Pennsylvania 16803


Frederick M. Neiswender, Esquire
Counsel for Defendants
501 East Market Street, Suite 3
Clearfield, Pennsylvania 16830

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

SCOTT B. COWFER, :
Contractor, Claimant :
:
vs. : No. 03-1300-CD

BARRY AND TAMMY FOX, :
Husband and Wife, Owners :

To: Barry and Tammy Fox
Date: February 2, 2005

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FEB 03 2005

William A. Shaw
Prothonotary/Clerk of Courts

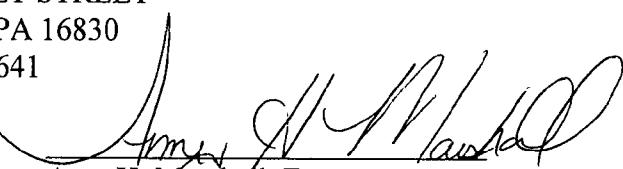
IMPORTANT NOTICE

YOU ARE HEREBY IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A
WRITTEN APPERANCE PERONALLY OR BY ATTORNEY AND FILE IN
WIRITNG WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE
CLAIMS SET FORTH AGIANST YOU. UNLESS YOU ACT WITHIN TEN DAYS
FROM THE DATE OF THIS NOTICE A JUDGEMENT MAY BE ENTERED
AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR
PROPERTY OR OTHER IMPORTANT RIGHTS.

YOU SHOULD TAKE THIS PAPER TO YOU LAWYER AT ONCE. IF YOU DO
NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH
BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT
HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAYWER, THIS OFFICE MAY BE ABLE
TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY
OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO
FEE.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
203 EAST MARKET STREET
CLEARFIELD, PA 16830
814-765-2641


Amy H. Marshall, Esq.

Babst, Calland, Clements & Zomnir
101 Innovation Blvd., Suite 206
State College, PA 16803
814-867-8055

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

SCOTT B. COWFER, :
Contractor, Claimant :
vs. :
: No. 03-1300-CD
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :
:

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William A. Shaw
Prothonotary/Clerk of Courts

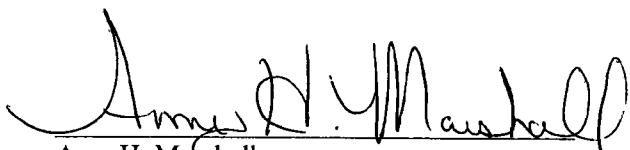
CERTIFICATE OF SERVICE

I, Amy H. Marshall, hereby certify that a true and correct copy of the foregoing Default Notice, was served on Frederick M. Neiswender, Esquire, Counsel for parties of record, and Barry and Tammy Fox, the Defendants, in the above-entitled matter, via the United States Postal Service, first class postage prepaid, on February 2, 2005, addressed as follows:

Frederick M. Neiswender, Esq.
501 East Market Street, Suite 3
Clearfield, PA 16830

Barry and Tammy Fox
106 Walnut Street
Smithmill, PA 16680

Date: 2/2/05



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
Babst, Calland, Clements & Zomnir, P.C.
101 Innovation Blvd., Suite 206
State College, PA 16803
Telephone: (814) 867-8055
Facsimile: (814) 231-8000

IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW

SCOTT B. COWFER, :
Contractor/Claimant, : Docket No. 03-1300-CD
vs. :
BARRY and TAMMY FOX, :
Husband and Wife, Owners. :
:

FILED No CC
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OCT 26 2006 copy to
William A. Shaw
Prothonotary/Clerk of Courts
C/A

PRAECIPE FOR SUBSTITUTION OF COUNSEL

TO THE PROTHONOTARY:

Please be advised that Frederick M. Neiswender, Esquire is withdrawing from the case as counsel for Defendants and Attorneys David B. Consiglio and Stacy Parks Miller are to be substituted as counsel for Defendants.

**MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.**

By: Frederick M. Neiswender
Frederick M. Neiswender, Esquire
I.D.# 74456
501 East Market Street, Suite 3
Clearfield, PA 16830

By: David B. Consiglio

David B. Consiglio, Esquire
I.D. # 72772

By: Stacy Parks Miller

Stacy Parks Miller, Esquire
I.D. # 74824
720 South Atherton Street
State College, PA 16801

Date: 10/12/2006

**IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION - LAW**

SCOTT B. COWFER, : Docket No. 03-1300-CD
: :
Contractor/Claimant, : Type of Case:
: :
vs. : Civil Action
: :
BARRY and TAMMY FOX, : :
: :
Husband and Wife, Owners. : Type of Pleading:
: :
: : Plaintiff's Consent to Amended
: : Answer and New Matter
: :
: : Filed on Behalf of Defendants
: :
: : Counsel of Record for This Party
: :
: : David B. Consiglio, Esquire
: : Miller Kistler Campbell
: : Miller Williams & Benson
: : 720 S. Atherton Street
: : State College, PA 16801
: : (814) 234-1500

FILED NOCC
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NOV 27 2006
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William A. Shaw
Prothonotary/Clerk of Courts

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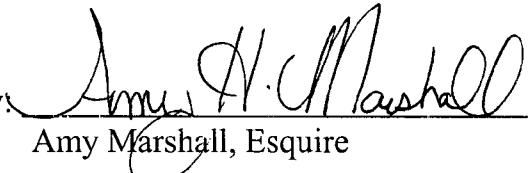
**IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

SCOTT B. COWFER, :
: Contractor/Claimant, : Docket No. 03-1300-CD
: vs. :
: BARRY and TAMMY FOX, :
: Husband and Wife, Owners. :
:

PLAINTIFF'S CONSENT TO AMEND ANSWER AND NEW MATTER

I, Amy Marshall, Esquire, counsel for Plaintiff, do hereby consent, pursuant to Rule 1033 of the Pennsylvania Rules of Civil Procedure to the filing of an Amended Answer and New Matter by Defendants.

**BABST, CALLAND, CLEMENTS,
ZOMNIR, P.C.**

By: 
Amy Marshall, Esquire

**IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION - LAW**

SCOTT B. COWFER, : Docket No. 03-1300-CD
: :
Contractor/Claimant, : Type of Case:
: :
vs. : Civil Action
: :
BARRY and TAMMY FOX, :
: :
Husband and Wife, Owners. : Type of Pleading:
: :
: : Defendants' Amended Answer
: : and New Matter
: :
: : Filed on Behalf of Defendants
: :
: : Counsel of Record for This Party
: :
: : David B. Consiglio, Esquire
: : Miller Kistler Campbell
: : Miller Williams & Benson
: : 720 S. Atherton Street
: : State College, PA 16801
: : (814) 234-1500

FILED
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NOV 27 2006 cc
William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

SCOTT B. COWFER,	:	
	:	
Contractor/Claimant,	:	Docket No. 03-1300-CD
	:	
vs.	:	
	:	
BARRY and TAMMY FOX,	:	
	:	
Husband and Wife, Owners.	:	

DEFENDANTS' AMENDED ANSWER AND NEW MATTER

NOW, come the Defendants, BARRY FOX and TAMMY FOX, by and through their undersigned counsel, and file this Amended Answer and New Matter and state in support thereof as follows:

1. Admitted.
2. Denied. It is denied that Defendants reside at 106 Walnut Street, Smithmill, PA 16680. Defendants' correct address is 999 Walnut Street, Smithmill, PA 16680.
3. Admitted in part, denied in part. It is admitted that Defendants hired Plaintiff to provide labor for the construction of their home. It is denied that Defendants reside at 106 Walnut Street, Smithmill, PA 16680.
4. Denied. It is denied that Plaintiff did not sign a release and waiver of Mechanics' Lien for the work done at Defendants residence.
5. Admitted.

6. Admitted in part, denied in part. It is admitted that Plaintiff provided some labor on Defendants' residence. It is denied that Plaintiff provided that amount of labor agreed upon by the parties. Defendants demand strict proof thereof.
7. Admitted.
8. Denied. It is denied that Plaintiff performed work for the Defendants for or during twelve weeks. Defendants demand strict proof thereof.
9. Neither admitted, nor denied. Defendants do not have sufficient knowledge to respond to the averment made by Plaintiff because Defendants are not familiar with all of the names of the person referred to by Plaintiff. It is denied that all of these people worked on the Defendants' residence at the same time. Defendants demand strict proof thereof.
10. Denied. It is denied that the number of man hours worked over the period stated by Plaintiff is as follows: Week 1-30.5 hours, Week 2-95 hours, Week 3-37 hours, Week 4-61 hours, Week 5-30 hours, Week 6-25.5 hours, Week 7-130 hours, Week 8-97.5 hours, Week 9-99.5 hours, Week 10-101.5 hours, Week 11-95.5 hours, Week 12-71.5 hours. Defendants demand strict proof thereof.
11. Denied. It is denied that the total payroll cost incurred by the Plaintiff to provide these man-hours was \$13,340.50. Defendants demand strict proof thereof.

12. Denied. It is denied that Plaintiff completed the following items:

- House completely framed
- Roof trusses set
- Roofing installed
- Drywall completed
- Kitchen cabinets installed
- Oak staircase and banister installed
- Exterior finishes and trim completed
- Garage completed, including poured concrete floor

Defendants demand strict proof thereof.

13. Denied. It is denied that Plaintiff was not responsible for the installation or completion of electrical, plumbing, heating, painting, staining, insulation or flooring. No written contract was entered into between Plaintiff and Defendants. Defendants demand strict proof thereof.

14. Denied. It is denied that the agreed upon price for “labor only” was broken down into the following categories and pricing:

- Framing and roofing \$6,581.00
- Installation of doors and windows \$2,122.00
- Installation of siding, soffit and fascia \$5,126.00
- Installation and finishing of drywall \$4827.00
- Installation of kitchen cabinets \$1,000.00
- Installation of exterior and interior trim \$1,544.00
- Garage \$3,500.00

No written contract was entered into between Plaintiff and Defendants.

Defendants demand strict proof thereof.

15. Denied. It is denied that Plaintiff was delayed during the construction project. Defendants demand strict proof thereof.

16. Denied. It is denied that only two projects needed to be completed by Plaintiff when work was stopped on July 3, 2003. It is further denied that the correct materials were not on site to complete the projects. Defendants demand strict proof thereof.
17. Denied. It is denied that Defendants never contacted Plaintiff when the materials arrived to complete the work. Defendants complained numerous times to Plaintiff regarding his failure to complete the work agreed upon.
18. Denied. It is denied that Defendants never contacted Plaintiff regarding his failure to complete work on their residence. Defendants complained numerous times to Plaintiff regarding his failure to complete the work agreed upon.
19. Denied. It is denied that Plaintiff was unaware that work was not completed at the Defendants' residence. Defendants complained numerous times to Plaintiff regarding his failure to complete the work agreed upon.
20. Denied. It is denied that Defendants owe Plaintiff \$19,350.00 for the work performed.

WHEREFORE, Defendants respectfully request that this Honorable Court dismiss Plaintiff's Amended Complaint and enter judgment in favor of Defendants.

NEW MATTER

NOW, come Defendants, BARRY FOX and TAMMY FOX, by and through their undersigned counsel, and aver as New Matter the following:

21. Paragraphs 1 through 21 hereof are incorporated herein by reference as if set forth fully.
22. No written contract was entered into between Plaintiff and Defendants.
23. Plaintiff signed a Waiver of Mechanics' Lien of Defendants' property, but Defendants never filed the waiver. A true and correct copy is attached hereto as Exhibit "A."
24. Plaintiff worked sporadically on Defendants' residence over the time period set forth in Paragraph 7 of Plaintiff's Complaint.
25. Plaintiff never completed the tasks set forth in Paragraph 12 of his Complaint.
26. The prices set forth in Paragraph 14 of Plaintiff's Complaint were not agreed on by the parties. These figures were taken from a contract Defendants presented to Plaintiff, but Plaintiff refused to sign. A true and correct copy is attached as Exhibit "B."
27. Plaintiff stopped working because Defendants refused to pay him additional sums until each project was complete.
28. Defendants complained numerous times to Plaintiff regarding the poor workmanship of Plaintiff and his employees.
29. Plaintiff's cause of action is barred by doctrine of accord and satisfaction.
30. Defendants acted with the consent of Plaintiff.
31. Plaintiff's cause of action is barred by estoppel.
32. Plaintiff's cause of action is barred due to fraud perpetrated by Plaintiff.

33. Defendants' actions were at all times justified.
34. Plaintiff's cause of action is barred by the doctrine of laches.
35. Defendants acted as a result of license given by Plaintiff.
36. Plaintiff's cause of action is barred as a result of Defendants' payment.
37. Defendants acted with privilege at all times.
38. Plaintiff's cause of action is barred because Defendants were released from obligation.
39. Plaintiff's cause of action is barred by statute of frauds.
40. Plaintiff's cause of action is barred by the statute of limitations.
41. Plaintiff's cause of action is barred by the doctrine of truth and waiver.
42. By way of affirmative defense, Defendants claim set off against any damages or liens claimed by Plaintiffs, all of which are denied.

WHEREFORE, Defendants respectfully request that this Honorable Court dismiss Plaintiff's Amended Complaint and enter judgment in favor of Defendants.

Respectfully submitted,

**MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.**

By: 

David B. Consiglio, Esquire
I.D.# 72772
720 South Atherton Street
State College, PA 16801
(814) 234-1500

Date: November 22, 2006

**IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

SCOTT B. COWFER, :
: :
Contractor/Claimant, : Docket No. 03-1300-CD
:
vs. :
: :
BARRY and TAMMY FOX, :
: :
Husband and Wife, Owners. :
:

CERTIFICATE OF SERVICE

I, David B. Consiglio, Esquire, of Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., do hereby certify that on this 22nd day of November, 2006, a true and correct copy of the foregoing document was served on the following person by depositing the same in the United States Mail, postage prepaid, addressed as follows:

Amy Marshall, Esquire
Babst, Calland, Clements, Zomnir, P.C.
328 Innovation Boulevard, Suite 200
State College, PA 16803

**MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.**

By: 

David B. Consiglio, Esquire

Stipulations Against Liens

Barry A. Fox and
Tammy D. Fox Owners

Vs.

SCOTT COWFER Contractor
COWFER CONTRACTING

Whereas, Barry A. Fox and Tammy D. Fox of P.O. Box 132 Beccaria, PA, 16616, is about to execute contemporaneously herewith, a contract, with SCOTT COWFER, COWFER CONTRACTING, For services and materials supplied for the erection of a residential building upon a lot of land situate at 999 Walnut Street, Smithmill, PA 16680, Gulich Township, Clearfield County, Pennsylvania, as set forth according to the deed as entered into record in Clearfield County Deed Book Volume 1370, Page 149-152.

Now, MARCH 25, 2003, at the time of and immediately before the execution of the principal contract, and before any authority has been given by the said Owner to the said Contractor to commence work on the said building, or purchase materials for the same in consideration of the making of the said contract with Contractor and the further consideration of One Dollar, to contractor paid by Owner, it is agreed that no lien shall be filed against the building by the contractor, or any sub-contractor, nor by any of the material, men or workman or any other person for any labor, or materials purchased, or extra labor or materials purchased for the erection of said building, the right to file such liens being expressly waived.

Witness, our hands and seals the day and year aforesaid.

By: Scott Cowfer
SCOTT COWFER

Barry A. Fox
Barry A. Fox
Tammy D. Fox
Tammy D. Fox

Exhibit "A"

DEFENDANT'S
EXHIBIT

Building Contract

This is an agreement between Scott Cowfer Contracting and Barry & Tammy Fox for the completion of a two story home being built on the Fox's property in Smithmill, PA.

Project Costs:

Scott Cowfer will provide "Labor Only" for completion of the house as follows:

Finishing of all framing and roofing of the entire house	\$6581.00
Completion of the entire garage	\$3500.00
Installation of all doors and windows	\$2122.00
Installation of siding, soffit and facia	\$5126.00
Installation and finishing of drywall	\$4827.00
Installation of kitchen cabinets	\$1000.00
Installation of all interior and exterior trim	\$1544.00
Job Total:	\$27400.00

In an effort to curtail costs and save time, the owners, at their discretion, may perform some of the above work thereby reducing the total cost of the project.

Project Timeline:

The following timeline will be in place for this project. Any missed dates unless, agreed upon in writing by both parties, will result in the deduction of \$100.00 / day for every day past the finished date.

Completion of the exterior portion of the home (Including siding, June 6, 2003
Soffit, facia, windows, doors, porches, lattice and exterior trim)

Completion of the interior portion of the home (Including drywall, June 18, 2003
Finishing, installation of doors, soffit, finished stairs and tub deck)

The owner will be responsible to have the following done in order to achieve the above dates:

Footers for porch supports June 2, 2003
Rough electrical and insulation June 6, 2003

Scott Cowfer

Date

Barry Fox

Date

Tammy Fox

Date

BARRY A.FOX and TAMMY D. FOX hereby state that they are the Defendants in this action and that the statements of fact made in the foregoing Answer are true and correct upon personal knowledge. The undersigned understand that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

DATE: 2/1/2005

B. A. Fox
BARRY A. FOX

DATE: 2/1/2005

Tammy D. Fox
TAMMY D. FOX

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION - LAW

SCOTT B. COWFER, : Docket No. 03-1300-CD
: :
Contractor/Claimant, : Type of Case:
: :
vs. : Civil Action
: :
BARRY and TAMMY FOX, :
: :
Husband and Wife, Owners. : Type of Pleading:
: :
: : Certificate of Readiness
: :
: :
: : Filed on Behalf of Defendants
: :
: :
: : Counsel of Record for This Party
: :
: : David B. Consiglio, Esquire
: : Miller Kistler Campbell
: : Miller Williams & Benson
: : 720 S. Atherton Street
: : State College, PA 16801
: : (814) 234-1500

FILED NO
m/10/2001
MAY 01 2001
JK

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

SCOTT B. COWFER, :
: :
Contractor/Claimant, : Docket No. 03-1300-CD
: :
vs. : :
: :
BARRY and TAMMY FOX, : :
: :
Husband and Wife, Owners. : :

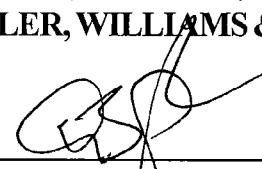
CERTIFICATE OF READINESS

TO THE PROTHONOTARY:

I, David B. Consiglio, Esquire, counsel for Plaintiff hereby certify that the above-captioned matter is ready for trial and that the matter has been pending at the above-captioned docket number since 2003. The depositions of the parties have been taken and completed. Kindly schedule the matter for trial at your earliest convenience.

Respectfully submitted,

**MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.**

By: 

David B. Consiglio, Esquire
I.D.# 72772
720 South Atherton Street
State College, PA 16801
(814) 234-1500

Date: April 30, 2007

**IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

SCOTT B. COWFER, :
: :
Contractor/Claimant, : Docket No. 03-1300-CD
:
vs. :
:
BARRY and TAMMY FCX, :
:
Husband and Wife, Owners. :
:

CERTIFICATE OF SERVICE

I, David B. Consiglio, Esquire, of Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., do hereby certify that on this 30th day of April, 2007, a true and correct copy of the foregoing document was served on the following person by depositing the same in the United States Mail, postage prepaid, addressed as follows:

Amy Marshall, Esquire
Babst, Calland, Clements, Zomnir, P.C.
328 Innovation Boulevard, Suite 200
State College, PA 16803

**MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.**

By: 

David B. Consiglio, Esquire

CA

**IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

SCOTT B. COWFER,	:	
	:	
Contractor/Claimant,	:	Docket No. 03-1300-CD
	:	
vs.	:	
	:	
BARRY and TAMMY FOX,	:	
	:	
Husband and Wife, Owners.	:	

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

BARRY A. and TAMMY D. FOX,	:	
husband and wife,	:	
	:	Docket No. 2007-00177-CD
Plaintiffs,	:	
	:	
	:	
vs.	:	
	:	
	:	
SCOTT B. COWFER,	:	
	:	
Defendant.	:	

MOTION FOR CONSOLIDATION

AND NOW come Barry and Tammy Fox, husband and wife, by and through their undersigned counsel, and file this Motion for Consolidation of Case No. 03-1300-CD and Case No. 2007-00177-CD and state in support thereof as follows:

FILED *No cc*
M 10:05 AM
JUL 30 2007 *CK*

William A. Shaw
Prothonotary/Clerk of Courts

1. Case No. 03-1300-CD was instituted by Scott Cowfer in the nature of a Mechanic's Lien.
2. Case No. 2007-00177-CD was instituted by the Fox's against Cowfer due to defective and deficient construction.
3. Most, if not all, of the operative facts in both cases are identical and arise out of construction services which were provided, or not provided, to the Fox's by Cowfer.
4. Cowfer contends that he performed in a workmanlike manner for which he is entitled to payment; Fox's contend that the job was not completed and that none of the work that was done was done in workmanlike fashion and indeed, resulted in damages to them in the amount of \$195,000.00.
5. The parties in the two cases are identical.
6. A pre-trial conference is scheduled for the Mechanic's Lien action on August 27, 2007 before the Honorable Paul Cherry.
7. The deposition of both parties have already been taken and discovery has been exchanged under the caption of the Mechanic's Lien action. The only issue known to the Fox's which remains outstanding is that counsel for Cowfer has generally alluded to an inspection of the property which, if permitted by the Court, can and should take place well prior to trial.
8. For the conservation of judicial resources, as well as those of the parties, these two cases should be consolidated and both pre-tried on August 27, 2007.

WHEREFORE, Barry and Tammy Fox respectfully request an Order consolidating Case No. 03-1300-CD and Case No. 2007-00177-CD for all purposes.

Respectfully submitted,

**MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.**

By: 

David B. Consiglio, Esquire
I.D.# 72772
720 South Atherton Street
State College, PA 16801
(814) 234-1500

Date: July 27, 2007

**IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

SCOTT B. COWFER, :
Contractor/Claimant, : Docket No. 03-1300-CD
vs. :
BARRY and TAMMY FOX, :
Husband and Wife, Owners. :
:

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

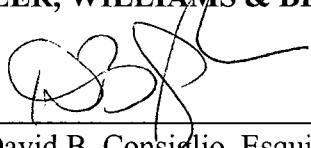
BARRY A. and TAMMY D. FOX, :
husband and wife, :
Plaintiffs, : Docket No. 2007-00177-CD
vs. :
SCOTT B. COWFER, :
Defendant. :
:

CERTIFICATE OF SERVICE

I, David B. Consiglio, Esquire, of Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., do hereby certify that on this 27th day of July, 2007, a true and correct copy of the foregoing document was served on the following person by depositing the same in the United States Mail, postage prepaid, addressed as follows:

Amy Marshall, Esquire
Babst, Calland, Clements, Zomnir, P.C.
328 Innovation Boulevard, Suite 200
State College, PA 16803

**MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.**

By: 

David B. Consiglio, Esquire

**IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

SCOTT B. COWFER, :
:
Contractor/Claimant, : Docket No. 03-1300-CD
:
vs. :
:
BARRY and TAMMY FOX, :
:
Husband and Wife, Owners. :
:

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

BARRY A. and TAMMY D. FOX, :
husband and wife, :
:
Plaintiffs, : Docket No. 2007-00177-CD
:
:
vs. :
:
:
SCOTT B. COWFER, :
:
Defendant. :
:

RULE

AND NOW, this _____ day of _____, 2007, upon consideration of Fox's Motion for Consolidation, a Rule is entered to show cause why Fox's Motion in the above-captioned matter should not be GRANTED.

RULE RETURNABLE this _____ day of _____, 2007, at _____ o'clock ____ .m. in Courtroom No. ____, in Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

Honorable Paul Cherry
Clearfield County Court of Common Pleas

IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW

SCOTT B. COWFER, :
Contractor/Claimant, : Docket No. 03-1300-CD
vs. :
BARRY and TAMMY FOX, :
Husband and Wife, Owners. :
:

FILED
01/4/2007
JUL 31 2007

William A. Shaw
Prothonotary/Clerk of Courts

4CC Atty

Consiglio

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW

BARRY A. and TAMMY D. FOX, :
husband and wife, :
Plaintiffs, : Docket No. 2007-00177-CD
vs. :
SCOTT B. COWFER, :
Defendant. :
:

ORDER

AND NOW, this 30th day of July, 2007, upon
consideration of the Motion to Consolidate Case No. 03-1300-CD and Case No. 2007-00177-
CD, the Motion is GRANTED. The cases shall be consolidated and a pre-trial conference
shall be held at 10:00 a.m., Monday, August 27, 2007.

BY THE COURT,


Honorable Paul Cherry
Clearfield County Court of Common Pleas

A

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

SCOTT B. COWFER : NO. 03-1300-CD
V. :
BARRY and TAMMY FOX :
:

ORDER

1. Non-Jury Trial in this matter is scheduled for November 19, 2007, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. The deadline for providing any and all outstanding discovery shall be by and no later than thirty (30) days prior to the commencement of trial.
3. Counsel for the parties, if they so desire, may submit a Trial Brief to the Court no more than fifteen (15) days prior to the commencement of trial.
4. The deadline for submitting any and all Motions shall be by and no later than fifteen (15) days prior to the commencement of trial.
5. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED
01101907
AUG 28 2007
100 Atts:
A. Marshall
D. Consiglio
S. Miller
F. Neiswender
Clerk
William A. Shaw
Prothonotary/Clerk of Courts
6K

IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW

SCOTT B. COWFER, :
Contractor/Claimant, : Docket No. 03-1300-CD
vs. :
BARRY and TAMMY FOX, :
Husband and Wife, Owners. :
BARRY A. and TAMMY D. FOX, :
husband and wife, :
Plaintiffs, : Docket No. 2007-00177-CD
vs. :
SCOTT B. COWFER, :
Defendant. :
UA

FILED
014:00 AM
SEP 26 2007
William A. Shaw
Prothonotary/Clerk of Courts
4CC Atty Consiglio
(6K)

ORDER

AND NOW this 25th day of September, 2007, upon the Motion to Continue Trial
Date filed by Counsel for Barry A. And Tammy D. Fox, the Motion is GRANTED. Non-Jury Trial
is scheduled for the 8th day of February, 2008 beginning at 9:00 o'clock am. All other
provisions of the ORDER of August 28, 2007 shall remain in effect.

BY THE COURT


PAUL E. CHERRY, JUDGE

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

SCOTT B. COWFER :
vs. : No. 03-1300-CD
BARRY and TAMMY FOX, :
Husband and Wife, Owners :
BARRY A. and TAMMY D. FOX, : No. 07-177-CD
Husband and Wife, Owners :
vs. :
SCOTT B. COWFER :

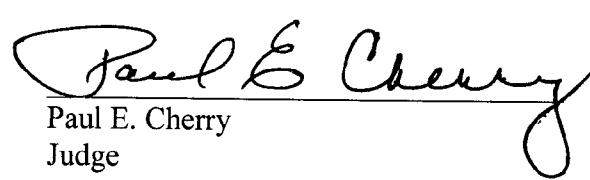
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0140061
SEP 26 2007

William A. Shaw
Prothonotary/Clerk of Courts
ICC Atys: Consiglio
Marshall-Steele
Miller

O R D E R

AND NOW, this 26th day of September, 2007, it is the ORDER of this Court that Pre-Trial Conference in the above captioned matter shall be and is hereby scheduled for December 13, 2007 at 9:30 A.M. in Judge's Chambers, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


Paul E. Cherry
Judge

**IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

SCOTT B. COWFER, :
Contractor/Claimant, : Docket No. 03-1300-CD
vs. :
BARRY and TAMMY FOX, :
Husband and Wife, Owners. :
:

FILED
OCT 4 2007
SEP 26 2007
Clerk

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

BARRY A. and TAMMY D. FOX, :
husband and wife, :
Plaintiffs, : Docket No. 2007-00177-CD
vs. :
SCOTT B. COWFER, :
Defendant. :
:

MOTION TO CONTINUE TRIAL DATE

AND NOW comes Counsel for Barry and Tammy Fox, husband and wife, and files
this Motion to Continue Trial Date Case No. 03-1300-CD and Case No. 2007-00177-CD and
states in support thereof as follows:

1. This Motion is UNOPPOSED as evidenced by the attached e-mail from opposing counsel for Scott B. Cowfer. (See attached e-mail, Exhibit "A").
2. The above-captioned cases were consolidated for all purposes including trial by Order of this Court dated July 30th 2007.
3. By Order dated August 28, 2007, Non-jury Trial has been scheduled for November 19, 2007 to begin at 9:00 a.m.
4. Counsel for Movants will be out-of-state due to a planned family trip beginning November 16, 2007 and through the date of trial.
5. Counsel for Movants believed that the trial could and would be covered by another attorney in his office, Stacy Parks Miller, Esquire, but subsequently learned that Attorney Parks Miller would be unable to appear for trial on November 19 due to the fact that she is scheduled for trial in a criminal case in Centre County.
6. It is believed that re-scheduling the trial date will do no violence to judicial economy and will not prejudice either party.

WHEREFORE, it is respectfully requested that the Trial Date be continued and re-scheduled for a date prior to November 19, 2007 or subsequent to November 26, 2007 regarding the above-captioned consolidated cases.

Respectfully submitted,

**MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.**

By: 

David B. Consiglio, Esquire
I.D.# 72772
720 South Atherton Street
State College, PA 16801
(814) 234-1500

Date: 25 September 2007

**IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

SCOTT B. COWFER, :
Contractor/Claimant, : Docket No. 03-1300-CD
vs. :
BARRY and TAMMY FOX, :
Husband and Wife, Owners. :

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

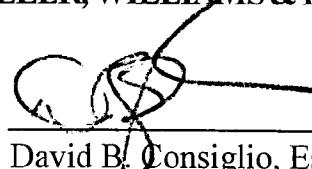
BARRY A. and TAMMY D. FOX, :
husband and wife, :
Plaintiffs, : Docket No. 2007-00177-CD
vs. :
SCOTT B. COWFER, :
Defendant. :

CERTIFICATE OF SERVICE

I, David B. Consiglio, Esquire do hereby certify that on this 25th day of September, 2007, a true and correct copy of the foregoing document was served on the following person by depositing the same in the United States Mail, postage prepaid, addressed as follows:

Alan F. Kirk, Esquire
Babst, Calland, Clements, Zomnir, P.C.
328 Innovation Boulevard, Suite 200
State College, PA 16803

**MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.**

By: 

David B. Consiglio, Esquire

David B. Consiglio

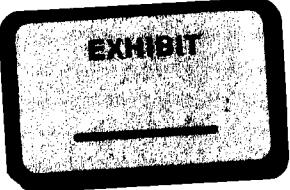
From: Kirk, Alan F. [akirk@bccz.com]
Sent: Monday, September 24, 2007 12:01 PM
To: David B. Consiglio
Subject: RE: Cowfer

Dave,

Just got your letter in the morning mail. I have no objection to a continuance. Let me know if Judge Cherry needs anything from me to confirm it. Thanks,

Alan F. Kirk, Esquire
Babst, Calland, Clements and Zomnir, PC
328 Innovation Blvd. Suite 200
State College, PA 16803
Phone: 814.867.8055
Fax: 814.867.8051
Email: akirk@bccz.com
Web Site: <http://www.bccz.com>

EXHIBIT



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

SCOTT B. COWFER : NO. 03-1300-CD
V. :
BARRY and TAMMY FOX :
:

FILED

DEC 13 2007

01/11/2008
William A. Shaw
Prothonotary/Clerk of Courts

CENT TW ATT'S

AMY MARSHALL
DAVID CONSOLI
STEVEN RAVENHORN

ORDER

1. Non-Jury Trial in this matter is scheduled for February 8, 2008, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Counsel for the parties, if they so desire, may submit a Trial Brief to the Court no more than fifteen (15) days prior to the commencement of trial.
3. The deadline for submitting any and all Motions shall be by and no later than fifteen (15) days prior to the commencement of trial.
4. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

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

SCOTT B. COWFER

v.

BARRY AND TAMMY FOX,
husband and wife, Owners

BARRY A. AND TAMMY D. FOX,
husband and wife, Owners

v.

SCOTT B. COWFER

03-1300-CD
No. 07-177 -CD

Type of Pleading: MOTION TO
WITHDRAW AS COUNSEL

Counsel of Record For This Party:

AMY H. MARSHALL, ESQUIRE
ID#74852
ALAN F. KIRK, ESQUIRE
ID#36893
Babst, Calland, Clements and
Zomnir, P.C.
328 Innovation Boulevard, Suite 200
State College, PA 16803
Phone: 814.867.8055/Fax: 814.867.8051
E-mail: amarshall@bccz.com

MOTION TO WITHDRAW AS COUNSEL

NOW COMES, BABST, CALLAND, CLEMENTS AND ZOMNIR, P.C., and
files this Motion wherein the following is a statement:

1. That Babst, Calland, Clements and Zomnir, PC. was retained as counsel by Scott B. Cowfer for representation in the above-captioned matters.
2. That despite numerous attempts to communicate with Scott B. Cowfer, there has been no response from him to any such communication.
3. That despite regular monthly communication regarding billing costs and fees no payment has been received by counsel.

FILED
M 10:52 AM
JAN 14 2008
William A. Shaw
Prothonotary/Clerk of Courts
Orig. to 07-177-CD
6K

CA

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

SCOTT B. COWFER	:	No. 03-1300
v.	:	
BARRY AND TAMMY FOX, husband and wife, Owners	:	No. 07-177-CD
	:	
BARRY A. AND TAMMY D. FOX, husband and wife, Owners	:	
v.	:	
SCOTT B. COWFER	:	

RULE TO SHOW CAUSE WHY MOTION SHOULD NOT BE GRANTED

AND NOW, this 16th day of January, 2008, upon consideration of the within Motion of Babst, Calland, Clemens and Zomni ^{PC}, a Rule is hereby issued upon the Owners to show cause why the Motion To Withdraw As Counsel should not be granted.

Rule Returnable the 24th day of January, 2008, in the Clearfield County Courthouse, Clearfield County Courtroom No. 2, Clearfield County, Pennsylvania.

① 2:00 p.m.

BY THE COURT:

/s/ Paul E. Cherry

RECEIVED
01/16/08
JAN 16 2008

cc to CJA to
Fax to Atty.
Marshall

William A. Shaw
Prothonotary/Clerk of Courts 4CC Atty. Marshall

Orig. to 07-177-CD

GR

(CA)

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

SCOTT B. COWFER :
VS : NO. 03-1300 and 07-177-CD
BARRY AND TAMMY FOX :

O R D E R

NOW, this 24th day of January, 2008, this being the day and date set for Hearing on Plaintiff's Motion to Withdraw as Counsel, it is the Order of this Court that said Motion is GRANTED and Amy H. Marshall, Esquire, and Alan F. Kirk, Esquire, and the law firm of Babst, Calland, Clements and Zomnir, PC, are permitted to withdraw as counsel and order that they file a praecipe with the prothonotary's office within no more than Seven (7) days from today's date.

Trial will be held as scheduled on February 8th, 2008.

BY THE COURT,

Paul E. Cherry

Judge

FILED
01/28/2008
JAN 28 2008

William A. Shaw
Prothonotary/Clerk of Courts
ICC DAtys: Marshall/Steele/Kirk
Consiglio
S. Miller

(X)

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

SCOTT B. COWFER :
-VS- : No. 03-1300-CD
BARRY AND TAMMY FOX :

N O T I C E

In accordance with the Rules of Appellate Procedure, Rule 1922, Notice is hereby given that if no objections are made to the text of the transcript within five (5) days after such notice, the transcript in the above-captioned matter will become part of the record upon being filed in the Prothonotary's office.

January 22, 2008

Thomas D. Snyder

Date

Thomas D. Snyder, RPR
Official Court Reporter

FILED
01/23/08
JAN 29 2008
©2008

William A. Shaw
Prothonotary/Clerk of Courts

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

SCOTT B. COWFER : No. 03-1300-CD
:
v. :
BARRY AND TAMMY FOX, : No. 07-177-CD
husband and wife, Owners :
:
BARRY A. AND TAMMY D. FOX, :
husband and wife, Owners :
:
v. :
SCOTT B. COWFER :
:

PRAECIPE FOR WITHDRAWAL OF APPEARANCE

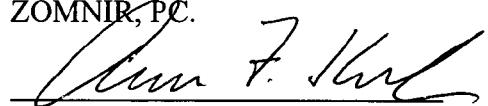
TO: PROTHONOTARY OF CLEARFIELD COUNTY:

Kindly withdraw the appearance of Alan F. Kirk, Esquire, Amy H. Marshall, Esquire, Erica L. Steele, Esquire, and the law firm of Babst, Calland, Clements and Zomnir, P.C. in the above-captioned action in accordance with the Order by the Honorable Paul E. Cherry.

Respectfully submitted,

BABST, CALLAND, CLEMENTS, AND
ZOMNIR, P.C.

Date: 1-29-08



Alan F. Kirk, Esquire
Attorney for Plaintiff

FILED NO
M12/29/08
JAN 30 2008
60
⑥

William A. Shaw Copy to CIA
Prothonotary/Clerk of Courts

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

SCOTT B. COWFER	:	No. 03-1300-CD
v.	:	
BARRY AND TAMMY FOX, husband and wife, Owners	:	No. 07-177-CD
	:	
BARRY A. AND TAMMY D. FOX, husband and wife, Owners	:	
	:	
	:	
v.	:	
SCOTT B. COWFER	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Praeclipe for Entry of Appearance was served by Certified Mail and U.S. Mail, First Class, with a certificate of mailing, this **29th day of January 2008**, upon the following:

***DAVID B. CONSIGLIO, ESQUIRE
MILLER, KISTLER, CAMPBELL,
WILLIAMS & BENSON, INC.
720 SOUTH ATHERTON STREET
STATE COLLEGE, PA 16801***

***SCOTT B. COWFER
1359 BELL HOLLOW ROAD
PORT MATILDA, PA 16870***



Michele M. Steudler, Paralegal to
Alan F. Kirk, Esquire and Amy H.
Marshall, Esquire
Babst, Calland, Clements, and Zomnir, P.C.
328 Innovation Boulevard, Suite 200
State College, PA 16803

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

SCOTT B. COWFER, :
Contractor/Claimant :
vs. :
BARRY A. FOX and TAMMY D. FOX, :
Husband & Wife, Owners : NO. 2003 - 1300 - CD

BARRY A. FOX and TAMMY D. FOX, :
Husband & Wife, :
Plaintiffs :
vs. :
SCOTT B. COWFER, :
Defendant : NO. 2007 - 00177 - CD

ORDER OF COURT

AND NOW, this 8th day of February, 2008, following bench trial; the Court noting that Scott B. Cowfer has failed to appear despite receiving due and proper notice, upon consideration of the testimony presented, the exhibits entered into the record, **IT IS THE ORDER OF THIS COURT** that on the Mechanic's Lien filed by Scott B. Cowfer to Docket No. 03-1300-CD, judgment shall be and is hereby entered in favor of Barry A. Fox and Tammy D. Fox, Owners, and against Scott B. Cowfer, Claimant. **IT IS THE FURTHER ORDER OF THIS COURT** that the Mechanic's Lien filed on September 3, 2003, by Scott B. Cowfer, Claimant, as well as any amended Mechanic's Liens filed by Claimant thereafter shall be and are hereby stricken and shall be of no further force or effect.

IT IS THE FURTHER ORDER OF THIS COURT that on the civil matter filed to Docket No. 2007-177-CD, judgment shall be and is hereby entered in favor of Barry A. Fox and Tammy D. Fox and against Scott B. Cowfer in the amount of \$195.000.00 plus interest from July 3, 2003, plus costs of suit.

This verdict and order shall be filed with both the Prothonotary of Clearfield County as well as the Office of Register and Recorder of Deeds of Clearfield County.

ACC Atlys: Consiglio
Miller
03/33/08

William A. Shaw
Prothonotary/Clerk of Courts

ICC Scott Cowfer
1359 Bell Hollow Road
Port Matilda, PA 16870

6K

BY THE COURT:


THE HONORABLE PAUL E. CHERRY
Judge

ORIGINAL

**IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

OPY

SCOTT B. COWFER, :
Contractor/Claimant, : Docket No. 03-1300-CD
vs. :
BARRY and TAMMY FOX, :
Husband and Wife, Owners. :
:

**FILED NO
CC**
APR 23 2008
B&L William A. Shaw
Prothonotary/Clerk of Courts
orig. to
07-177-CD

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

BARRY A. and TAMMY D. FOX, :
husband and wife, : Docket No. 2007-00177-CD
Plaintiffs, :
vs. :
SCOTT B. COWFER, :
Defendant. :
:

PRAECIPE FOR ENTRY OF JUDGMENT

To the Prothonotary:

Please enter judgment in favor of Barry A. Fox & Tammy D. Fox, Husband and Wife, Owners and Plaintiffs, and against Scott B. Cowfer, Contractor/Defendant, as ordered by Judge Cherry in the attached Order dated February 8, 2008 (Exhibit "A"), rendered following a bench trial before Judge Cherry, no timely appeal or other motions or petitions having been filed.

**MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.**

By: 

David B. Consiglio, Esquire
I.D.# 72772
720 South Atherton Street
State College, PA 16801
(814) 234-1500

Date: April 16, 2008

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

SCOTT B. COWFER,	:	
Contractor/Claimant	:	
vs.	:	
BARRY A. FOX and TAMMY D. FOX,	:	
Husband & Wife, Owners	:	NO. 2003 - 1300 - CD
BARRY A. FOX and TAMMY D. FOX,	:	
Husband & Wife,	:	
Plaintiffs	:	
vs.	:	
SCOTT B. COWFER,	:	
Defendant	:	NO. 2007 - 00177 - CD

ORDER OF COURT

AND NOW, this 8th day of February, 2008, following bench trial; the Court noting that Scott B. Cowfer has failed to appear despite receiving due and proper notice, upon consideration of the testimony presented, the exhibits entered into the record, **IT IS THE ORDER OF THIS COURT** that on the Mechanic's Lien filed by Scott B. Cowfer to Docket No. 03-1300-CD, judgment shall be and is hereby entered in favor of Barry A. Fox and Tammy D. Fox, Owners, and against Scott B. Cowfer, Claimant. **IT IS THE FURTHER ORDER OF THIS COURT** that the Mechanic's Lien filed on September 3, 2003, by Scott B. Cowfer, Claimant, as well as any amended Mechanic's Liens filed by Claimant thereafter shall be and are hereby stricken and shall be of no further force or effect.

IT IS THE FURTHER ORDER OF THIS COURT that on the civil matter filed to Docket No. 2007-177-CD, judgment shall be and is hereby entered in favor of Barry A. Fox and Tammy D. Fox and against Scott B. Cowfer in the amount of \$195.000.00 plus interest from July 3, 2003, plus costs of suit.

This verdict and order shall be filed with both the Prothonotary of Clearfield County as well as the Office of Register and Recorder of Deeds of Clearfield County.

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

FEB 11 2008

Attest.

William L. Gray
Prothonotary/
Clerk of Courts

BY THE COURT:

/s/ Paul E. Cherry

THE HONORABLE PAUL E. CHERRY,
Judge

EXHIBIT

A



BABST | CALLAND | CLEMENTS | ZOMNIR
A PROFESSIONAL CORPORATION

AMY H. MARSHALL
Attorney at Law
T 814.867.8055
F 814.231.8000
C 814.571.1429
amarshall@bcz.com

September 17, 2004

The Honorable Paul E. Cherry
Clearfield County Courthouse
230 E. Market St.
Clearfield, PA 16830

RE: Cowfer v. Fox
No. 03-1300-CD

Dear Judge Cherry:

I am writing to request that the Rule Returnable scheduled for September 23, 2004 at 9:00am be rescheduled. I am scheduled to be in Montour County all day on the 23rd. I apologize for the late request, but I only received the Rule on the 13th via fax from Mr. Neiswender.

I can be reached at 814-867-8055.

Sincerely,

Babst, Calland, Clements & Zomnir, P.C.

A handwritten signature in black ink that reads "Amy H. Marshall".

Amy H. Marshall



BABST | CALLAND | CLEMENTS | ZOMNIR
A PROFESSIONAL CORPORATION

FAX COVER SHEET

THIS MESSAGE AND FOLLOWING PAGES ARE INTENDED ONLY FOR THE PERSON TO WHOM IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

Please deliver the following material as soon as possible

Date:	September 17, 2004
To:	Judge Paul Cherry

Fax Phone Number:	814-765-7649	Phone Number:
Confirmed By:		
From:	Amy H. Marshall	
Phone Number:	814.867.8055	Client Number:
Dept. Code:	Matter Number:	

Additional Comments or Instructions

Pages (incl. cover):	Return Originals To:	Floor:
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THE MAZZA LAW GROUP, P.C.

ATTORNEYS AT LAW

1315 SOUTH ALLEN STREET, SUITE 302, STATE COLLEGE, PA 16801
(814) 237-6255 (814) 237-5752 FAX
www.mazzalaw.com

April 8, 2004

RECEIVED

Judge Cherry
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

APR 08 2004

RE: Scott B. Cowfer

COURT ADMINISTRATOR'S
OFFICE

v.
Barry and Tammy Fox
No. 03-1300-CD

Dear Judge Cherry:

Please accept the following as our formal Letter Brief with respect to the above captioned matter.

The issue before the Court is whether pursuant to the Mechanics' Lien Law of 1963, Scott Cowfer is considered a contractor or sub-contractor for the purpose of filing a Mechanics' Lien against Barry and Tammy Fox.

The Mechanics' Lien statute is found at 49 P.S. § 1101. The statute defines the terms contractor, sub contractor and owner. Section 1201(4) defines a contractor as "one who, by contract with the owner, express or implied, erects, constructs, alters or repairs an improvement or any part thereof or furnishes labor, skill or superintendence thereto..." By contrast, a sub contractor is defined in section 1201(5) as "one who, by contract with the contractor, express or implied, erects, constructs, alters or repairs an improvement or any part thereof;". An owner is defined at section 1201(3) as the "owner in fee, a tenant for life or years or one having any other estate in or title to property.

There is no dispute that Barry and Tammy Fox are the owners of the property located at 106 Walnut Street, Smithmill, PA. The testimony presented at the evidentiary hearing held on March 12, 2004 establishes Scott Cowfer was a contractor as it is defined in section 1201(4) of the statute.

Mr. Cowfer testified as did Barry Fox that Mr. Cowfer had an agreement to provide labor for the construction of the home. The agreement that Mr. Cowfer had was directly with Barry and Tammy Fox. There was not a third party with whom Mr. Cowfer contracted.

WILLIAM L. ARRBUCKLE, III, ROBERT H. BASCOM, JR., RODNEY A. BEARD, KELLEY S. GILLETTE,
S. PAUL MAZZA, CHARLES A. SCHNEIDER, MARK S. WEAVER

Judge Cherry
April 8, 2004
Page 2 of 3

for the work done on the Foxes home. Mr. Fox testified that he, as the owner was in charge of the project and that he dealt directly with Mr. Cowfer.

The Mechanics' Lien Law of 1963 differentiates between a contractor and a subcontractor for the purpose of determining what type of notices must be provided to an owner in order to perfect a mechanics' lien. A contractor is required to provide one notice to the owner, of his or her intention to file a mechanics lien. A subcontractor, by statute, is required to provide two separate notices to the owner. A preliminary notice must be sent to the owner putting the owner on notice that the subcontractor has not received payment for work or materials that have been provided to a contractor. [see 49 P.S. § 1501(a)] A second formal notice is then required to be served upon the owner by the subcontractor setting forth the particulars of the claim. [see 49 P.S. § 1501(b)]

Contractors and sub contractors, as defined by the Mechanics Lien Act of 1963 are treated differently with regard to the notice provisions and the amount of specificity that must be included in the lien because of the differences in the contractual relationships. The owner, by definition has privity of contract with the contractor. Therefore, the owner knows what work the contractor has been hired to do, knows the materials the contractor is to provide and knows how much the contractor is to be paid. To the contrary, a subcontractor does not have privity of contract with the owner. The subcontractor has privity of contract with the contractor. The notice provisions for a subcontractor are to put an owner on notice as to what work was done by a subcontractor and how much the subcontractor is to be paid. This is information that the owner would not have because the owner does not have a contractual relationship with the subcontractor.

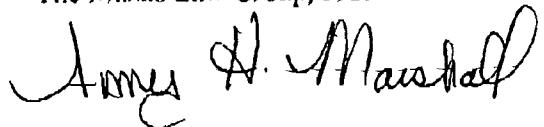
In this case, Barry and Tammy Fox had a direct contractual relationship with Scott Cowfer. The Foxes knew what work was to be completed by Mr. Cowfer and how much Mr. Cowfer was to be paid. As Mr. Cowfer testified, he provided Mr. Fox with a bid proposal for the labor that was to be provided. The bid was subsequently accepted by Mr. Fox and Mr. Cowfer and his crew began work on the house. Mr. Fox testified that he was acting as his own general contractor overseeing the construction, plumbing, etc. Therefore, according to the statute, Mr. Cowfer, as a contractor, was only required to provide one notice to the Foxes. Mr. Cowfer provided the appropriate notice with a general statement of the kind and character of the labor provided in compliance with 49 P.S. § 1501(5). The mechanics lien as filed by Mr. Cowfer sets forth the terms of the agreement, the contract price, the date the contractor last worked, and the property on which the improvements were erected.

The Court should find that based upon the statute and the testimony of the parties, Scott Cowfer was acting as a contractor. Therefore, Mr. Cowfer was required to provide one notice to the Foxes. Further, the mechanics lien as filed was only required to set forth a "general statement of the kind and character of labor or materials furnished". Those

Judge Cherry
April 8, 2004
Page 3 of 3

requirements were plead in the mechanics' lien as filed by Mr. Cowfer. Therefore, the Defendants' Preliminary Objections should be overruled and stricken.

Very truly yours,
The Mazza Law Group, P.C.



Amy H. Marshall

AHM/cts

CC: Scott Cowfer
Frederick M. Neiswender, Esquire

W:\Clients\SCowfer\Scott\letter Brief contractor issue.doc

THE MAZZA LAW GROUP, P.C.

1315 South Allen Street, Suite 302
State College, PA 16801
Phone: (814) 237-6255
Fax: (814) 237-5752

FAX COVER SHEET

TO: Judge Cherry, Clearfield County FAX NO: (814) 765-7649
Courthouse

FROM: Amy H. Marshall DATE: April 8, 2004
THROUGH: Chris T. Spearly

SUBJECT: Scott Cowser v. Barry & Tammy PAGES: 4 including cover
Fox No. 03-1300-CD

<input checked="" type="checkbox"/> Original to follow
By:
<input checked="" type="checkbox"/> First Class USPS Mail
<input type="checkbox"/> Overnight Courier
<input type="checkbox"/> Hand Delivery
<input type="checkbox"/> Original will NOT follow

RECEIVED

APR 08 2004

COURT ADMINISTRATOR'S
OFFICE

*****CONFIDENTIAL*****

The information contained in this facsimile message is attorney/client privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

William J. Arbuckle, III; Robert H. Bascom, Jr.; Kelley S. Gillette;
S. Paul Mazza; Charles A. Schneider; Mark S. Weaver

Mike Ventre
813 Ventre Road
Altoona, PA 16602

STATEMENT

DATE

TERMS *Net
30 Days*

TO *Barry Fox*
ADDRESS *P.O. Box 132*
IN ACCOUNT WITH *Buccaria, PA 16611*

2hrs	Truck Trunk S-2003	450/hr	90.00
2hrs	Truck Trunk	450/hr	90.00
1hr.	Truck Trunk	450/hr	45.00
	Stone		433.52
1hr.	Truck Trunk S-8-03	450/hr	45.00
	Stone		65.00
2hrs	Truck Trunk S-9-03	450/hr	90.00
	Stone		144.92
81/2hrs	Backhoe	50/hr	425.00
21/2hrs	Backhoe w/hammer	100/hr	250.00
1hr.	Moving		50.00
11/2hrs	Labor	25/hr	275.00
10hrs	Dumper S-1003	50/hr	500.00
1hr.	Moving		50.00
1hr.	Truck Trunk	450/hr	45.00
	Stone		111.88
			\$2477.09

DC5812

William J. Miles (Creative Masonry)

Bid (Labor and Materials)

Date : 6/11/03

To: Barry Fox

CREATIVE MASONRY CONTRACTING

William J. Miles
118 Mason Lane
P.O. Box 172
Coalport, P.A. 16627
(814)672-5339

We are pleased to submit the following bid:

Job Description: Masonry work on house

MATERIALS

TERMS:

William J. Miles

Half down to start

Balance upon completion

BEECH PLUMBING & HEATING
PO BOX 320
BELLWOOD PA 16617

INVOICE

BILL TO:
BARRY FOX

DATE:
04/07/2003

JOB#

CUSTOMER
BARRY FOX

INSTALLATION	DESCRIPTION	AMOUNT
HEATING PLUMBING	50% ROUGH IN 50% ROUGH IN	\$ 3,450.00 \$ 1,550.00
TOTAL		\$ 5,000.00

PJ 4/8/03
With check # 1279

BEECH PLUMBING & HEATING PROPOSAL

DATE: 2-24-2003

CUSTOMER: BARRY FOX

DESCRIPTION	AMOUNT
HEATING	\$ 6,300.00
3 ZONES - 1ST FLOOR, SECOND FLOOR, BASEMENT (1) 40 GALLON SIDE TANK, SLANT FIN BASEBOARD, (2) OIL TANK	
EXTRA HEATING	\$ 600.00
HEAT IN GARAGE	
PLUMBING	\$ 3,100.00
(3) TOILETS, (3) VANITYS, (2) TUB UNITS, (1) KITCHEN SINK, (2) HOSEBIBS, (1) LAUNDRY BOX	
NOT RESPONSIBLE FOR OUTSIDE SEWER LINE OR WATER LINE NO BASEMENT ROUGH INS NO FIXTURES OR FAUCETS	
TERMS - 50% DUE AT ROUGH IN - 50% DUE AT COMPLETION	
TOTAL	\$10,000.00

Date: January 21, 2003

To: Kurt McKinney, Jr.
Juniata Valley Bank
(717) 242-0381

Subject: Construction Loan Disbursal Schedule Amendment

Kurt:

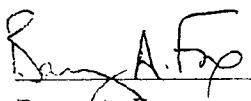
In order to provide materials for our project, Your Building Center is requiring confirmation of payment prior to issuing materials. In order to provide this confirmation, we would like to change the original draw schedule to be as follows:

Draw 1: \$20,000 Payable to Barry A. Fox, Tammy D. Fox and George W. McFarland, Jr.
Draw 2: \$20,000 Payable to Barry A. Fox, Tammy D. Fox and George W. McFarland, Jr.
Draw 3: \$20,000 Payable to Barry A. Fox, Tammy D. Fox and Your Building Center
Draw 4: \$20,000 Payable to Barry A. Fox, Tammy D. Fox and George W. McFarland, Jr.
Draw 5: \$20,000 Payable to Barry A. Fox, Tammy D. Fox and Your Building Center
Draw 6: \$20,000 Payable to Barry A. Fox, Tammy D. Fox and George W. McFarland, Jr.
Draw 7: \$16,608 Payable to Barry A. Fox, Tammy D. Fox and George W. McFarland, Jr.

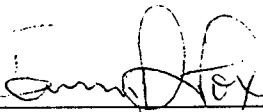
At this point, the loan will be turned over to Bob Tice at Deerfield Financial for the final disbursement and conversion to a conventional mortgage.

The time frame for each disbursement will remain the same as the original agreement.

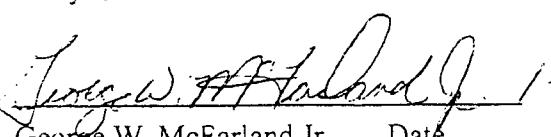
As a sign of good faith and intent to pay, George McFarland will issue prepayment of \$7000.00 to Your Building Center to initiate a line of credit which will be used to pay for building materials for this project. Your Building Center will also receive the two disbursements as listed above. If prior to completion of the project, the material cost should overrun the accrued value of \$47,000, George McFarland will be required to prepay for any additional materials required. Should the value of materials required be less than \$47,000, the balance will be returned by Your Building Center to Barry A. & Tammy D. Fox.


Barry A. Fox

1/21/03
Date


Tammy D. Fox

1/21/03
Date


George W. McFarland Jr.
McFarland Construction

1-21-03
Date

Kurt McKinney, Jr.
Juniata Valley Bank

PROPOSAL

No.

Date 3-28-03

Sheet No.

Proposal Submitted To:

Name Barry Fox
Street Po Bx 132
City Beccaria State Pa.
Phone 378-8917

Work To Be Performed At:

SCOTT B. COWFER
1359 EAST BELL HOLLOW LANE
Street PORT MATILDA, PA 16870
City _____ State _____
Date of Plans 1-800-684-7003 Architect _____

We hereby propose to furnish the materials and perform the labor necessary for the completion of

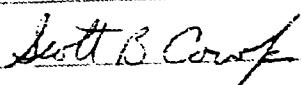
(1) \$2000.00 Down on START of Job. Rest will
be made in payments

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 (\$ 24,700.00)

with payments to be made as follows:

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

Respectfully submitted

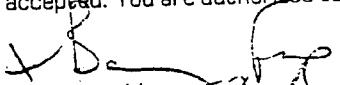


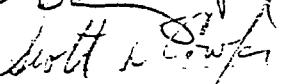
Per

Note-This proposal may be withdrawn by us if not accepted within 30 days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature 

Signature 

Date 3-28-03

TRIPPLICATE

MADE IN U.S.A.

Construction Quote Sheet

This is a request for quote for "labor only" to complete the 2 story house currently being constructed on my property in Janesville. The quote is to include all labor to completely finish the house as per the supplied blue prints and specs. All materials will be supplied by the owner and necessary sub-contractors will be provided and funded by the owner.

The following "labor only" items are to be considered when quoting:

1. Finishing of all framing and roofing. ~~\$6581.00~~ ~~\$3500. Garage.~~
2. Installation of all doors and windows ~~\$2122.00~~
3. Installation of siding, soffit and facia. ~~\$126.00~~
4. Installation of insulation (House and garage). ~~_____~~
5. Installation and finishing of drywall ~~\$4827.00~~
6. Installation of all kitchen cabinets ~~\$1000.00~~
7. Installation of all interior and exterior trim ~~\$1544.00~~

Masonry work as listed below:

- Concrete floors in basement and garage.
- Red brick chimney and footer (oil burner service).
- Fake stone covering of foundation on front and sides of house and garage (no rear) and all exposed areas of front porch support piers.
- Approx. 25' wide x 20' long parking spot in front of garage.
- Sidewalks from garage to front and side entrances of front porch.

The following is not to be considered in your quote:

Electrical
Plumbing
Heating
Painting / Staining
Installation of flooring materials

Quoted Price:

Time required to complete:

Additional comments:

Signed: _____ Date: _____

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

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

FEB 25 2004

SCOTT B. COWFER,	:	Attest.
Contractor, Claimant	:	
	:	
vs.	:	No. 03-1300-CD
	:	
BARRY AND TAMMY FOX,	:	
Husband and Wife, Owners	:	

William L. Brown
Prothonotary/
Clerk of Courts

CLAIMANT'S AMENDED PRELIMINARY OBJECTIONS TO OWNERS
PRELIMINARY OBJECTIONS TO THE MECHANIC'S LIEN

CLAIMANT, Scott B. Cowfer, through his Counsel, Amy H. Marshall, Esquire, would like to amend the Preliminary Objections filed in opposition to Owners Preliminary Objections to mechanics lien. Upon further review and research, the Claimant has additional grounds upon which to object. The additional grounds are set forth as follows:

II. CLAIMANT IS NOT REQUIRED TO COMPLY WITH 49 P.S. § 1503(6) TO PLEAD WITH DETAIL THE CONTENTS OF THE MECHANICS LIEN.

1. The Claimant was the general contractor for the Owners under the construction agreement.
2. Title 49 P.S. § 1503 sets forth the requirements for the content of a mechanics' lien.
3. As the general contractor, the Claimant is required to comply with 49 P.S. § 1503(5).
4. Subsection 5 requires the Complainant to make a "general statement of the kind and character of the material and labor furnished".
5. Subsection 6 applies to subcontractors and therefore does not apply to this mechanics' lien.

WHEREFORE, the Claimant respectfully requests that the Owners' Preliminary Objections be overruled and stricken.

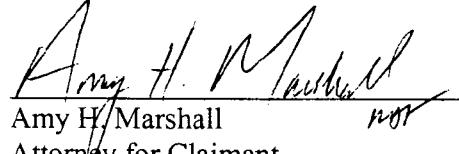
III. TITLE 49 P.S. § 1505 DOES NOT PERMIT PRELIMINARY OBJECTIONS ON THE BASIS THAT A PARTY FAILED TO COMPLETE CONSTRUCTION.

6. Paragraphs 1 through 5 are incorporated herein as if set forth fully below.
7. Section 1505 of Title 49 sets forth the grounds for filing preliminary objections to a mechanics' lien.
8. A party is permitted to object showing the property is exempt or immune from a lien or that a party has failed to conform to the requirements of the Mechanics' Lien Law of 1963.
9. The Owners have filed Preliminary Objections stating the Claimant did not complete construction. Although this may be brought as a defense to the enforcement action filed by the Claimant, it is not appropriate grounds for Preliminary Objections.

WHEREFORE, the Claimant respectfully requests that the Owners' Preliminary Objections be overruled and stricken.

Respectfully submitted,

2-24-04
Date


Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, PC
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL ACTION-LAW

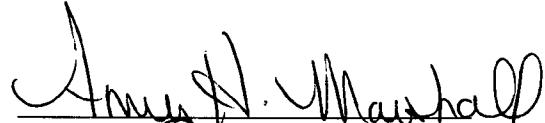
SCOTT B. COWFER, :
Contractor, Claimant :
:
vs. : No. 03-1300-CD
:
BARRY AND TAMMY FOX, :
Husband and Wife, Owners :

CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the foregoing Claimant's Amended Preliminary Objections to Owners Preliminary Objections to the Mechanic's Lien, was served on Frederick M. Neiswender, Esquire, Counsel for parties of record, in the above-entitled matter, via facsimile and by depositing the same within the custody of the United States Postal Service, first class postage prepaid, on February 24, 2004, addressed as follows:

Frederick M. Neiswender, Esquire
501 E. Market Street, Suite 3
Clearfield, PA 16830

Date: 2/25/04



Amy H. Marshall
Attorney for Claimant
Attorney ID #74852
The Mazza Law Group, P.C.
1315 South Allen Street, Suite 302
State College, PA 16801-5923
Telephone: (814) 237-6255
Facsimile: (814) 237-5752
E-mail: marshall@mazzalaw.com

Attest.

William L. Shan
Prothonotary/
Clerk of Courts

ORIGINAL

**IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

SCOTT B. COWFER, :
Contractor/Claimant, : Docket No. 03-1300-CD
vs. :
BARRY and TAMMY FOX, :
Husband and Wife, Owners. :
:

FILED
MAY 23 2008
APR 23 2008
No CC
6P
William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

BARRY A. and TAMMY D. FOX, :
husband and wife, :
Plaintiffs, : Docket No. 2007-00177-CD
vs. :
SCOTT B. COWFER, :
Defendant. :
:

**CERTIFICATE OF MAILING COPY OF
PRAECIPE FOR ENTRY OF JUDGMENT**

To the Prothonotary:

The undersigned attorney for Barry and Tammy Fox, husband and wife, Plaintiffs, certify pursuant to Pa.R.C.P. No. 237 that on April 16, 2008, a copy of the attached Praeclipe for Entry of Judgment was mailed by first class mail, postage prepaid, to the last known address (set forth below) for each party who has appeared in this action.

Scott B. Cowfer
R.D. #2, Box 800
Port Matilda, PA 15870-9802

**MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.**

By:  _____

David B. Consiglio, Esquire
I.D. # 72772
720 South Atherton Street
State College, PA 16801
(814) 234-1500

Date: April 16, 2008

**IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

SCOTT B. COWFER, :
Contractor/Claimant, : Docket No. 03-1300-CD
vs. :
BARRY and TAMMY FOX, :
Husband and Wife, Owners. :

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW**

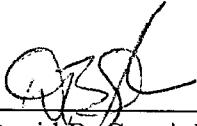
BARRY A. and TAMMY D. FOX, :
husband and wife, : Docket No. 2007-00177-CD
Plaintiffs, :
vs. :
SCOTT B. COWFER, :
Defendant. :

PRAECIPE FOR ENTRY OF JUDGMENT

To the Prothonotary:

Please enter judgment in favor of Barry A. Fox & Tammy D. Fox, Husband and Wife, Owners and Plaintiffs, and against Scott B. Cowfer, Contractor/Defendant, as ordered by Judge Cherry in the attached Order dated February 8, 2008 (Exhibit "A"), rendered following a bench trial before Judge Cherry, no timely appeal or other motions or petitions having been filed.

**MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.**

By: 

David B. Consiglio, Esquire

I.D.# 72772

720 South Atherton Street

State College, PA 16801

(814) 234-1500

Date: April 16, 2008

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

SCOTT B. COWFER, :
Contractor/Claimant :
vs. :
BARRY A. FOX and TAMMY D. FOX, :
Husband & Wife, Owners : NO. 2003 - 1300 - CD

BARRY A. FOX and TAMMY D. FOX, :
Husband & Wife, :
Plaintiffs :
vs. :
SCOTT B. COWFER, :
Defendant : NO. 2007 - 00177 - CD

ORDER OF COURT

AND NOW, this 8th day of February, 2008, following bench trial; the Court noting that Scott B. Cowfer has failed to appear despite receiving due and proper notice, upon consideration of the testimony presented, the exhibits entered into the record, **IT IS THE ORDER OF THIS COURT** that on the Mechanic's Lien filed by Scott B. Cowfer to Docket No. 03-1300-CD, judgment shall be and is hereby entered in favor of Barry A. Fox and Tammy D. Fox, Owners, and against Scott B. Cowfer, Claimant. **IT IS THE FURTHER ORDER OF THIS COURT** that the Mechanic's Lien filed on September 3, 2003, by Scott B. Cowfer, Claimant, as well as any amended Mechanic's Liens filed by Claimant thereafter shall be and are hereby stricken and shall be of no further force or effect.

IT IS THE FURTHER ORDER OF THIS COURT that on the civil matter filed to Docket No. 2007-177-CD, judgment shall be and is hereby entered in favor of Barry A. Fox and Tammy D. Fox and against Scott B. Cowfer in the amount of \$195.000.00 plus interest from July 3, 2003, plus costs of suit.

This verdict and order shall be filed with both the Prothonotary of Clearfield County as well as the Office of Register and Recorder of Deeds of Clearfield County.

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

BY THE COURT:

EXHIBIT

A

FEB 11 2008

/s/ Paul E. Cherry

Attest.

William A. Cherry
Prothonotary/
Clerk of Courts

THE HONORABLE PAUL E. CHERRY,
Judge