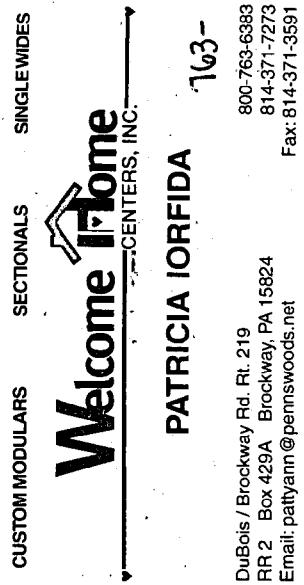


04-451-CD
EDWARD C. MILLER vs. BEARD OIL COMPANY, et al.

2004-451-CD
Edward Miller vs Beard Oil Company et al



Date: 08/24/2004

Clearfield County Court of Common Pleas

User: ASELFRI

Time: 02:39 PM

ROA Report

Page 1 of 1

Case: 2004-00451-CD

Current Judge: Fredric Joseph Ammerman

Edward C. Miller vs. Beard Oil Company, Beard Oil Company, Inc., J. V. Inc., Shaner Energy, Inc., Shaner Operating Corp.

Civil Other

Date	Judge
04/01/2004 ✓ Filing: Writ of Summons Paid by: Cherry, Toni M. (attorney for Miller, Edward C.) Receipt number: 1876385 Dated: 04/01/2004 Amount: \$85.00 (Check) 2 CC to Atty.	No Judge
04/23/2004 ✓ Praeclipe For Entry of Appearance On Behalf Of Defendants. filed by, s/Anthony G. DeBoef, Esquire Certificate of Service 2 cc Atty DeBoef	No Judge
✓ Praeclipe and Rule to File A Complaint. filed by, s/Anthony G. DeBoef, Esquire 2 cc & Rules to Atty DeBoef	No Judge
05/20/2004 ✓ Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
05/25/2004 ✓ Complaint. filed by, s/Toni M. Cherry, Esquire 2 cc Atty T. Cherry	No Judge
06/21/2004 ✓ Preliminary Objections to Plaintiff Edward C. Miller's Complaint, filed by s/Anthony G. DeBoef, Esq. Two CC Attorney DeBoef	No Judge
06/23/2004 ✓ Rule to Show Cause, AND NOW, this 23rd day of June, 2004, Rule issued Fredric Joseph Ammerman upon Plaintiff, Edward C. Miller, to show cause, if any there be, why the Preliminary Objections should not be granted. Rule returnable on the 16 day of July, 2004, at 10:00 a.m. in Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorney DeBoef	
07/12/2004 ✓ Order, AND NOW, this 9 day of July, 2004, Order that argument on Defendants' Preliminary Objections has been rescheduled from July 16, 2004 to Thursday, July 29, 2004 at 2:30 p.m. in Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. 2 CC to Atty T. Cherry and DeBoef	Fredric Joseph Ammerman
07/16/2004 ✓ ORDER, filed. 2 cert. to Atty. Cherry & DeBoef NOW, this 15th day of July, 2004, RE: Submitting Briefs	Fredric Joseph Ammerman

List of Jurors for CRIMINAL COURT
Scheduled for Thursday, August 19, 2004 at 8:45AM in Court Room 1
Number of Jurors Selected 265 Session # 6

Page 9
Date Printed 01/30/2004

Juror#	Juror Name	Ex 8-4-04	Address Line 1	Address Line 2	Address Line 3
3	2785 MCCRACKEN, WENDY		8 RAY ROAD	CURWENSVILLE PA 16828	
4	493 MCCREE, MARY ANN	7/8	905 W WASHINGTON AVE	DUBOIS PA 15801	
5	3826 MCQUILLAN, PATRICK	7/8	RR 1	MORINSHALE PA 16838	
6	4520 MEDRED, RAYMOND P.		1413 TREASURE LAKE	DUBOIS PA 15801	
7	3228 MINOR, GREGORY	7/8	PO BOX 2	KARTHaus PA 16845	
8	3537 MITCHELL, CHERYL		RR 1 BOX 627	GLEN RICHEY PA 16837	
9	2590 MOORE, ELIZABETH		RR 1 BOX 38	FRENCHVILLE PA 16836	
0	4539 MOORHOUSE, DAVID J.		469 TREASURE LAKE	DUBOIS PA 15801	
1	911 MORELL, DOROTHY	Ex 7-14-04	2060 GREEN GLEN DR	DUBOIS PA 15801	
2	317 MORRISON, LORI		536 S 2ND ST #1	CLEARFIELD PA 16830	
3	2967 MOSTYN, MICHAEL	8-19-04	210 HORTON STREET	PHILIPSBURG PA 16866	
4	3961 MULLINS, GEORGE M.		4243 SPLASH DAM ROAD	GRAMPIAN PA 16838	
5	1435 NEFF, JODY		179 E BRIDGE ST	PO BOX 63	VER PA 16692
6	927 NELSON, MARIA	7/8	811 1/4 DUBOIS ST	DUBOIS PA 15801	
7	2495 NETTERBLADE, JAMES JR		P.O. BOX 26	LANSE PA 16849	
8	4076 NORRIS, BARBARA	Ex 7-21-04	696 LAKE DRIVE	CURWENSVILLE PA 16828	
9	3556 NORRIS, GREGORY		120 ELIZABETH ST	CLEARFIELD PA 16830	
0	2033 NORRIS, KATHY		R D 2, BOX 311	CLEARFIELD PA 16830	
1	4539 NULL, DANA A.	7/8	RR 1 BOX 152	DUBOIS PA 15801	

10.

9

Date: 12/12/2005

Time: 11:08 AM

Page 1 of 1

Clearfield County Court of Common Pleas

User: LBENDER

ROA Report

Case: 2004-00451-CD

Current Judge: Fredric Joseph Ammerman

Edward C. Miller vs. Beard Oil Company, Beard Oil Company, Inc., J. V. Inc., Shaner Energy, Inc., Shaner Operating Corp.

Civil Other

Date	Selected Items	Judge
08/24/2004	✓ Order, NOW, this 23rd day of August, 2004, in consideration of defendant's Preliminary Objections, it is the ORDER of this Court as follows: 1. Relative the first Preliminary Objection, it is granted. Plaintiff's request for attorney's fees and costs on alleged unpaid water, gas, electric or real estate taxes is dismissed. 2. Defendant's second Preliminary Objection requesting that Defendants Shaner Energy, Inc . and Shaner Operation Corp., t/d/b/a Shaner Hotel Group be removed from the case is hereby dismissed. BY THE COURT /s/ Fredric J. Ammerman, President Judge. 1 CC Atty. T. Cherry, DeBoef.	Fredric Joseph Ammerman
10/04/2004	✓ Defendants' Answer to Plaintiff Edward C. Miller's Complaint, filed by Atty. Fredric Joseph Ammerman De Boef 2 Cert. to Atty.	Fredric Joseph Ammerman
09/26/2005	✓ Reply to New Matter filed by s/ Toni M. Cherry Esq. 2CC atty T. Cherry. ✓ Certificate of Service, filed. That on this 23rd day of September, 2005, ✓ Plaintiff's First Request for Production of Documents of Defendants was served upon ANTHONY G. DeBOEF, ESQ., counsel for Defendant, by mailing the same to him, filed by s/ Toni M. Cherry Esq. No CC.	Fredric Joseph Ammerman Fredric Joseph Ammerman
11/07/2005	✓ Defendants' Motion to Strike Plaintiff's New matter to Counterclaim, filed by s/ Anthony G. Deboef, Esquire. 4CC Atty. DeBoef	Fredric Joseph Ammerman
11/14/2005	✓ Rule To Show Cause, Rule returnable on the 14th day of Dec., 2005 at 11:30 a.m. in Courtroom No. 1. By The Court: /s/ Fredric J. Ammerman, Pres. Judge. 4CC atty DeBoef	Fredric Joseph Ammerman
12/08/2005	✓ Praecipe To mark New Matter to Counterclaim Withdrawn, filed by s/ Toni M. Cherry, Esquire. 2CC Atty. T. Cherry	Fredric Joseph Ammerman

12-14-05 Order, dated 12-13-05.

3-20-06 deft's Motion to Judgment on the Pleadings.

3-21-06 Rule to show Cause, dated 3-20-06

4-21-06 Order, dated 4-20-06

Date: 12/07/2005 Clearefield County Court of Common Pleas User: LBENDER
Time: 11:19 AM Hearings by Judge
Page 8 of 19
CT COMMON PLEAS,
All Case Types
From 12/12/2005 08:00 AM to 12/16/2005 05:00 PM
Frederic Joseph Ammerman
Begin Date and Time End Date and Time

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

FILED

EDWARD C. MILLER,	:	APR 01 2004
Plaintiff	:	William A. Shaw
vs.	:	Prothonotary/Clerk of Courts
BEARD OIL COMPANY; BEARD OIL	:	
COMPANY, INC.; J. V., INC., d/b/a	:	
BEARD OIL; J. V., INC., d/b/a SHANER	:	
ENERGY; SHANER ENERGY, INC.;	:	
and SHANER OPERATING CORP.,	:	
t/d/b/a SHANER HOTEL GROUP,	:	
Defendants	:	

PRAECIPE FOR WRIT OF SUMMONS

TO WILLIAM A. SHAW, PROTHONOTARY

Dear Sir:

Kindly enter our appearance on behalf of the Plaintiff and issue a Writ of Summons against the above-named Defendants whose addresses are as follows:

BEARD OIL COMPANY
R. D. #4-Washington Avenue
P. O. Box 628
Clearfield, PA 16830

J. V., INC., d/b/a BEARD OIL
R. D. #4-Washington Avenue
P. O. Box 628
Clearfield, PA 16830

SHANER ENERGY, INC.
P. O. Box 573
Fairgrounds Road #4
Hungtindon, PA 16652

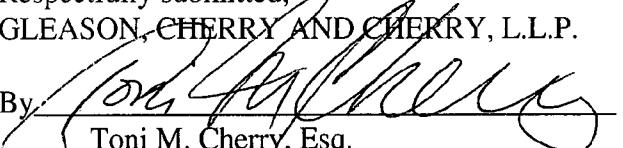
BEARD OIL COMPANY, INC.
R. D. #4-Washington Avenue
P. O. Box 628
Clearfield, PA 16830

J. V., INC., t/d/b/a SHANER ENERGY
R. D. #4-Washington Avenue
Clearfield, PA 16830

SHANER OPERATING CORP., t/d/b/a
SHANER HOTEL GROUP
Omega Financial Building
366 Walker Drive
State College, PA 16801

Respectfully submitted,
GLEASON, CHERRY AND CHERRY, L.L.P.

By


Toni M. Cherry, Esq.
One North Franklin Street, P. O. Box 505
DuBois, PA 15801
Supreme Court No.: 30205
(814) 371-5800

Date: April 1, 2004

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

COPY

SUMMONS

Edward C. Miller

Vs.

NO.: 2004-00451-CD

**Beard Oil Company;
Beard Oil Company, Inc.;
J. V. Inc., d/b/a Beard Oil;
J. V. Inc., d/b/a Shaner Energy;
Shaner Energy, Inc.; and
Shaner Operating Corp. t/d/b/a
Shaner Hotel Group**

TO: Beard Oil Company;
Beard Oil Company, Inc.;
J. V. Inc., d/b/a Beard Oil;
J. V. Inc., d/b/a Shaner Energy;
Shaner Energy, Inc.; and
Shaner Operating Corp. t/d/b/a
Shaner Hotel Group

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 04/01/2004

William A. Shaw
Prothonotary

Issuing Attorney:
Toni M. Cherry
P. O. Box 505
DuBois, PA 15801

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

EDWARD C. MILLER, Plaintiff	:	
	:	
v.	:	No. 2004-00451-CD
	:	
BEARD OIL COMPANY; BEARD OIL COMPANY, INC.; J.V. INC., d/b/a BEARD OIL; J.V. INC., d/b/a SHANER ENERGY; SHANER ENERGY, INC.; and SHANER OPERATING CORP. t/d/b/a SHANER HOTEL GROUP, Defendants	:	
	:	JURY TRIAL DEMANDED
	:	

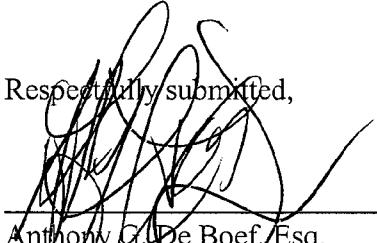
PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter the appearance of Anthony G. De Boef, Esquire, of Mitinger & De Boef, as attorney for Defendants Beard Oil Company; Beard Oil Company, Inc.; J.V. Inc. d/b/a Beard Oil; J.V. Inc. d/b/a Shaner Energy; Shaner Energy, Inc.; and Shaner Operating Corp. t/d/b/a Shaner Hotel Group, in the above-captioned matter, reserving our right to answer or otherwise plead to Plaintiff's Complaint.

By:

Respectfully submitted,


Anthony G. De Boef, Esq.
Attorney I.D. No. 71532
MITINGER & DE BOEF
2147 East College Avenue
State College, PA 16801
(814)-231-4052
Attorney for Defendants

Dated:

4/15/04

FILED

APR 23 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

EDWARD C. MILLER,	:	
Plaintiff	:	
	:	
v.	:	No. 2004-00451-CD
	:	
BEARD OIL COMPANY; BEARD OIL	:	
COMPANY, INC.; J.V. INC., d/b/a	:	
BEARD OIL; J.V. INC., d/b/a SHANER	:	
ENERGY; SHANER ENERGY, INC.; and	:	
SHANER OPERATING CORP. t/d/b/a	:	
SHANER HOTEL GROUP,	:	
Defendants	:	JURY TRIAL DEMANDED
	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by
depositing the same in the United States Mail, postage prepaid, at Harrisburg, Pennsylvania on
the ____ day of April 2004, on all counsel of record as follows:

Toni M. Cherry, Esquire
P.O. Box 505
DuBois, Pennsylvania 15801
Attorney for Plaintiff

By:

MITINGER & De BOEF
Anthony G. De Boef, Esq.
MITINGER & DE BOEF
2147 East College Avenue
State College, PA 16801

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

FILED

APR 23 2004

William A. Shaw
Prothonotary/Clerk of Courts

EDWARD C. MILLER,
Plaintiff

v. : No. 2004-00451-CD

BEARD OIL COMPANY; BEARD OIL
COMPANY, INC.; J.V. INC., d/b/a
BEARD OIL; J.V. INC., d/b/a SHANER
ENERGY; SHANER ENERGY, INC.; and
SHANER OPERATING CORP. t/d/b/a
SHANER HOTEL GROUP,

Defendants : JURY TRIAL DEMANDED

:

PRAECIPE AND RULE TO FILE A COMPLAINT

TO THE PROTHONOTARY OF SAID COURT:

Please issue a Rule on Plaintiff to file a Complaint in the above case within twenty (20) days after service of the Rule or suffer a judgment of *non pros*.

Respectfully submitted,

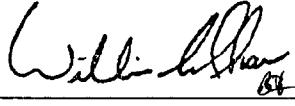
By:

Anthony G. De Boef, Esq.
Attorney I.D. No. 71532
MITINGER & DE BOEF
2147 East College Avenue
State College, PA 16801
Attorney for Defendants

Dated: 4/15/04

RULE

AND NOW, April 23, 2004 RULE IS ISSUED AS ABOVE.



PROTHONOTARY

In The Court of Common Pleas of Clearfield County, Pennsylvania

MILLER, EDWARD C.

VS.

BEARD OIL COMPANY a/

SUMMONS

Sheriff Docket #

15382

04-451-CD

FILED
04-39-04
MAY 20 2004
10

SHERIFF RETURNS

William A. Shaw
Prothonotary/Clerk of Courts

NOW APRIL 5, 2004 AT 7:52 AM SERVED THE WITHIN SUMMONS ON BEARD OIL COMPANY, DEFENDANT AT EMPLOYMENT, RD#4, WASHINGTON AVE., PO BOX 628, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO LORI McGOVERN, OFFICE. ADM. A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: NEVLING/MCCLEARY

NOW APRIL 5, 2004 AT 7:52 AM SERVED THE WITHIN SUMMONS ON BEARD OIL COMPANY, INC., DEFENDANT AT EMPLOYMENT, RD#4, WASHINGTON AVE., PO BOX 628, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO LORI McGOVERN, OFFICE. ADM. A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: NEVLING/MCCLEARY

NOW APRIL 5, 2004 AT 7:52 AM SERVED THE WITHIN SUMMONS ON J.V. INC. t/d/b/a SHANER ENERGY, , DEFENDANT AT EMPLOYMENT, RD#4, WASHINGTON AVE., PO BOX 628, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO LORI McGOVERN, OFFICE. ADM. A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: NEVLING/MCCLEARY

NOW APRIL 5, 2004 AT 7:52 AM SERVED THE WITHIN SUMMONS ON J.V. INC. d/b/a BEARD OIL , DEFENDANT AT EMPLOYMENT, RD#4, WASHINGTON AVE., PO BOX 628, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO LORI McGOVERN, OFFICE. ADM. A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: NEVLING/MCCLEARY

NOW APRIL 2, 2004 , WILLIAM WALTERS, SHERIFF OF HUNTINGDON COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN SUMMONS ON SHANER ENERGY INC., DEFENDANT.

NOW APRIL 7, 2004 SERVED THE WITHIN SUMMONS ON SHANER ENERGY INC., DEFENDANT BY DEPUTIZING THE SHERIFF OF HUNTINGDON COUNTY. THE RETURN OF SHERIFF WALTERS IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED ELIZABETH BURKE, CFO.

NOW APRIL 2, 2004, DENNY NAU, SHERIFF OF CENTRE COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN SUMMONS ON SHANER OPERATING CORP. t/d/b/a SHANER HOTEL GROUP, DEFENDANT.

NOW APRIL 7, 2004 SERVED THE WITHIN SUMMONS ON SHANER OPERATING CORP. t/d/b/a SHANER HOTEL GROUP, DEFENDANT BY DEPUTIZING THE SHERIFF OF CENTRE COUNTY. THE RETURN OF SHERIFF NAU IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED KAREN HUGHES, RESEARCH TEAM LEADER.

In The Court of Common Pleas of Clearfield County, Pennsylvania

MILLER, EDWARD C.

VS.

BEARD OIL COMPANY a/c

SUMMONS

Sheriff Docket # 15382

04-451-CD

SHERIFF RETURNS

Return Costs

Cost	Description
69.25	SHERIFF HAWKINS PAID BY: ATTY CK# 9011
60.00	SURCHARGE PAID BY: ATTY CK# 9012
25.00	HUNTINGDON CO. SHFF. PAID BY: ATTY.
31.00	CENTRE CO. SHFF. PAID BY: ATTY.

Sworn to Before Me This

20th Day Of May 2004

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

So Answers,

Chester A. Hawkins
My Marilyn Harris
Chester A. Hawkins
Sheriff



SHERIFF'S OFFICE

HUNTINGDON COUNTY, PENNSYLVANIA

241 Mifflin Street
Huntingdon, PA 16652

Telephone: 814-643-0880
William G. Walters, Sheriff

Edward C. Miller

No. 451-CD

Term: 2004

Vs.

Shaner Energy, Inc.

Now, the 7th day of April, 2004, at 0918 A.M./P.M. I served the within Summons

Shaner Energy, Inc. at Po Box 573, Fair Grounds Road #4

by handing to Elizabeth Burke, CFO

one true and correct copy/copies of the within Summons

and made known to Elizabeth

the contents thereof.

So Answers,

William G. Walters

William G. Walters, Sheriff

Christopher K. Skipper

Deputy Christopher K. Skipper

Chief Deputy/Deputy

Costs:

Rec. & Doc.	\$9.00
Service	\$9.00
Mileage/Postage	\$4.00
Surcharge	---
Affidavit	\$3.00
Miscellaneous	---
Total Costs	\$25.00 Paid

Sworn and subscribed to
before me this 8th
day of April
2004, A.D.
Tammy S. Coons
Prothonotary/Notary Public

Notarial Seal
Tammy S. Coons, Notary Public
Huntingdon Boro, Huntingdon County
My Commission Expires Oct. 21, 2006

Member, Pennsylvania Association of Notaries

SHERIFF'S OFFICE

CENTRE COUNTY

Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

**SHERIFF SERVICE
PROCESS RECEIPT, AND AFFIDAVIT OF RETURN**

INSTRUCTIONS FOR SERVICE OF PROCESS: You must file one instruction sheet for each defendant. Please type or print legibly. Do not detach any copies.

1. Plaintiff(s)

Edward C. Miller

2. Case Number

04-451-C D

3. Defendant(s)

Shaner Operating Group / Shaner Hotel Group

4. Type of Writ or Complaint:

SUMMONS

SERVE

→
AT

5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levied, Attached or Sold.

Karen Hughes

6. Address (Street or RFD, Apartment No., City, Boro, Twp., State and Zip Code)

366 Walker Dr State College PA / Omega Financial Bldg.

7. Indicate unusual service: Reg Mail Certified Mail Deputize Post Other

Now, 20_____. I, SHERIFF OF CENTRE COUNTY, PA., do hereby depose the Sheriff of _____ County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. _____

Sheriff of Centre County

8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE

NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN — Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

9. Print/Type Name and Address of Attorney/Originator

10. Telephone Number

11. Date

12. Signature

SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE

13. I acknowledge receipt of the writ or complaint as indicated above } SIGNATURE of Authorized CCSD Deputy of Clerk and Title 14. Date Filed 15. Expiration/Hearing Date

TO BE COMPLETED BY SHERIFF16. Served and made known to Karen Hughes, on the 7 day of April
2004, at 12:10 o'clock, P m., at 366 Walker Dr. State College, Omega Financial Bldg, County of Centre

Commonwealth of Pennsylvania, in the manner described below:

Defendant(s) personally served.
 Adult family member with whom said Defendant(s) resides(s). Relationship is _____
 Adult in charge of Defendant's residence.
 Manager/Clerk of place of lodging in which Defendant(s) resides(s).
 Agent or person in charge of Defendant's office or usual place of business.
 _____ and officer of said Defendant company.
 Other Research Team Leader

On the _____ day of _____, 20_____, at _____ o'clock, _____ M.

Defendant not found because:

Moved Unknown No Answer Vacant Other _____

Remarks:

Advance Costs	Docket	Service	Sur Charge	Affidavit	Mileage	Postage	Misc.	Total Costs	Costs Due or Refund
75.00	9.00	9.00	5.00	250	9.00	.50	1.00	31.00	41.00

17. AFFIRMED and subscribed to before me this 17

20 day of May 2004
 23 Corinne Peters
 Notary Public
 Notary Seal
 Corinne Peters, Notary Public
 My Commission Expires September, 2006
 Member, Pennsylvania Association of Notaries

So Answer.

18. Signature of Dep. Sheriff

21. Signature of Sheriff

19. Date

4-7-04

22. Date

SHERIFF OF CENTRE COUNTY

Amount Pd. Page

24. I ACKNOWLEDGE RECEIPT OF SAME 5/2005'S RETURN SIGNATURE
 OF MY AUTHORIZED ATTORNEY AND TITLE
 Member, Pennsylvania Association of Notaries

25. Date Received



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

#397
OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915

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

ROBERT SNYDER
CHIEF DEPUTY
CYNTHIA AUGHENBAUGH
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK
PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
PAGE 15382

EDWARD C. MILLER

TERM & NO. 04-451-CD

VS

DOCUMENT TO BE SERVED:

BEARD OIL COMPANY a/

SUMMONS

SERVE BY: 05/01/2004

MAKE REFUND PAYABLE TO: TONI M. CHERRY, ESQ.

SERVE: SHANER OPERATING CORP. t/d/b/a SHANER HOTEL GROUP

ADDRESS: Omega Financial Bldg., 366 Walker Drive, State College, Pa. 16801

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF OF CENTRE COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 2ND Day of APRIL 2004

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

09-26-04
PA 15382

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

EDWARD C. MILLER,

Plaintiff

: No. 2004 - 451 C.D.

vs.

BEARD OIL COMPANY; BEARD OIL
COMPANY, INC.; J. V., INC., d/b/a
BEARD OIL; J. V., INC., d/b/a SHANER
ENERGY; SHANER ENERGY, INC.;
and SHANER OPERATING CORP.,
t/d/b/a SHANER HOTEL GROUP,

Defendants

: Type of Case: CIVIL

: Type of Pleading: COMPLAINT

: Filed on Behalf of: EDWARD C.
: MILLER, Plaintiff

: Counsel of Record for this Party:

: TONI M. CHERRY, ESQ.
: Supreme Court No.: 30205

: GLEASON, CHERRY AND
: CHERRY, L.L.P.

: Attorneys at Law
: P.O. Box 505
: One North Franklin Street
: DuBois, PA 15801

: (814) 371-5800

FILED

MAY 25 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

EDWARD C. MILLER, :
Plaintiff :
:
vs. :
:
BEARD OIL COMPANY; BEARD OIL : No. 2004 - 451 C. D.
COMPANY, INC.; J. V., INC., d/b/a :
BEARD OIL; J. V., INC., d/b/a SHANER :
ENERGY; SHANER ENERGY, INC.; :
and SHANER OPERATING CORP., :
t/d/b/a SHANER HOTEL GROUP, :
Defendants :

NOTICE

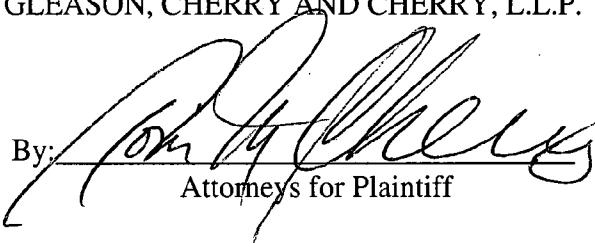
You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Notice and Complaint are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses 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 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, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Office of the Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641 (Ext. 88 - 89)

GLEASON, CHERRY AND CHERRY, L.L.P.

By:


Tom P. Gleason
Attorneys for Plaintiff

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

EDWARD C. MILLER, :
Plaintiff :
vs. :
BEARD OIL COMPANY; BEARD OIL : No. 2004 - 451 C. D.
COMPANY, INC.; J. V., INC., d/b/a :
BEARD OIL; J. V., INC., d/b/a SHANER :
ENERGY; SHANER ENERGY, INC.; :
and SHANER OPERATING CORP., :
t/d/b/a SHANER HOTEL GROUP, :
Defendants :

C O M P L A I N T

AND NOW, comes the Plaintiff, EDWARD C. MILLER, by and through his Attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and brings this Complaint upon causes of action whereof the following are statements:

1. Plaintiff, EDWARD C. MILLER, is an adult individual who resides at R. D. #3, Box 274, DuBois, Clearfield County, Pennsylvania 15801.
2. The Defendant, BEARD OIL COMPANY is the fictitious name under which J. V., INC. does business for the purpose of distributing gasoline and petroleum products and has a business address at R. D. #4-Washington Avenue, P. O. Box 628, Clearfield, Pennsylvania 16830.
3. That Defendant, BEARD OIL COMPANY, INC. is a corporation authorized to conduct business within the Commonwealth of Pennsylvania, having a place of business at

R. D. #4-Washington Avenue, P. O. Box 628, Clearfield, Pennsylvania 16830, and which, by Articles of Merger/Consolidation filed April 30, 1991, is now merged and/or consolidated with J. V., INC.

4. Defendant, J. V., INC., d/b/a BEARD OIL, is a corporation licensed to do business in the Commonwealth of Pennsylvania and has a place of business at R. D. #4-Washington Avenue, P. O. Box 628, Clearfield, Pennsylvania 16830. The said J. V., INC., does business under the fictitious name of BEARD OIL for the purposes of owning real estate and distributing oil and gas.

5. That Defendant, J. V., INC., t/d/b/a SHANER ENERGY, INC., is a corporation authorized to conduct business within the Commonwealth of Pennsylvania, having a place of business at R. D. #4-Washington Avenue, Clearfield, Pennsylvania 16830. The said J. V., INC., does business under the registered fictitious name of SHANER ENERGY for the purpose of distributing gasoline and petroleum products.

6. That Defendants, J. V., INC., d/b/a BEARD OIL and Defendant, J. V., INC., t/d/b/a SHANER ENERGY are successors in interest to Defendants, BEARD OIL COMPANY and BEARD OIL COMPANY, INC.

7. That Defendant, SHANER ENERGY, INC., is a corporation authorized to conduct business within the Commonwealth of Pennsylvania and having a place of business at P. O. Box 573, Fairgrounds Road No. 4, Huntingdon, Pennsylvania 16652.

8. That Defendant, SHANER ENERGY, INC., is the parent company of Defendant,

J. V., INC., d/b/a BEARD OIL, and Defendant, J. V., INC., t/d/b/a SHANER ENERGY, and both of the foregoing Defendants have always held themselves out as SHANER ENERGY, INC., companies.

9. That Defendant, SHANER OPERATING CORP t/d/b/a SHANER HOTEL GROUP, is a business corporation authorized to do business in the Commonwealth of Pennsylvania under the registered fictitious name of SHANER HOTEL GROUP and has a business address at Omega Financial Building, 366 Walker Drive, State College, Pennsylvania 16801. Said Defendant is the parent company of all of the foregoing Defendant businesses named herein.

10. That at all times material hereto, Plaintiff, EDWARD C. MILLER, was the owner of a certain service station facility and real estate situate along Route 219 South in the Township of Sandy, Clearfield County, Pennsylvania, described on the assessment maps of Sandy Township and Clearfield County as May No. 128.0-A2-654-1.

COUNT I

Claim for an Accounting at Law for All Rents Due Under the Lease Dated October 1, 1981, between Edward C. Miller and Beard Oil Company, Inc.

11. Plaintiff incorporates herein by reference the averments contained in Paragraphs 1 through 10 inclusive of this Complaint as if the same were set forth at length herein.

12. On October 1, 1981, Plaintiff leased the premises along Route 219 South in Sandy Township, R. D. #3, DuBois, Pennsylvania, to Defendant, BEARD OIL COMPANY, INC., under a commercial Lease Agreement, a copy of which is attached hereto and made a part hereof as Exhibit "A".

13. The terms of the monthly rental due under said Lease provided that:

The rental for the said premises shall be payable in advance, effective October 1, 1981, and payable at the rate of One Cent (1¢) per gallon on all gallonage delivered to the premises with a minimum rental of Five Hundred and no/100 (\$500.00) Dollars per month an a maximum rental of One Thousand and no/100 (\$1,000.00) Dollars per month.

14. That at no time during the term of said Lease did the Defendant, BEARD OIL COMPANY, INC., nor any of the other Defendants, ever pay to Plaintiff more than Five Hundred Dollars (\$500.00) per month and at no time did the said Defendants ever provide the Plaintiff with any accounting of the gallonage delivered to the premises.

15. That Plaintiff believes and therefore avers that during the term of said Lease, Defendants caused to be delivered to the premises large quantities of gasoline; however, the number of gallons delivered to the premises is unknown to the Plaintiff, since the information relating thereto is in the exclusive possession and control of the Defendants.

16. Plaintiff has demanded that Defendants account to him for the amount of gallonage delivered to the premises during the term of the foregoing Lease so that Plaintiff can determine if he is entitled to more than the minimum rental provided in the Lease.

17. That Defendants have refused to account to the Plaintiff for such deliveries and have refused to pay to Plaintiff the amount due him on account of those deliveries,

18. That Plaintiff is unable to state the exact amount of rental due him, as no account has ever been rendered to him by the Defendants.

19. That in addition, Paragraph 6 of said Lease provides that the Defendants herein are to be liable to pay that portion of the real estate taxes which apply to the land or premises leased by said Agreement.

20. That Defendants never paid the real estate taxes that the Lease obligated them to pay nor did they ever reimburse the Plaintiff for the taxes due on the premises that were the subject of the Lease.

21. That the real estate taxes on the premises leased by Defendants from Plaintiff for the years that the Lease was in effect from 1984 through 1987 are as follows:

<u>YEAR</u>	<u>CO/TWP TAXES-FACE</u>	<u>SCHOOL TAXES-FACE</u>
1984	\$ 493.84	\$1,345.82
1985	\$ 504.96	\$1,345.82
1986	\$ 504.96	\$1,323.58
1987	\$ 556.13	\$1,434.80

22. That in the event of any default by Defendants in the payment of any rent that was due under said Lease, Paragraph 14 allowed Plaintiff to confess judgment against Defendants for the amount of rental unpaid plus interest thereon, together with 5% attorney's commission and with costs for the collection of same.

23. Judgment has not been entered on the attached Lease in any jurisdiction.

WHEREFORE, Plaintiff, EDWARD C. MILLER, asks the Court to enter an Order:

(a) directing the Defendants to reimburse Plaintiff for all real estate taxes paid by him during the term of the Lease, together with interest thereon from the time that said payments were due and owing, together with attorney's commission of 5% thereon and costs of collection;

(b) directing the Defendants to account fully to the Plaintiff for all gallonage delivered to the premises during the lease term for the purposes of calculating the actual monthly rent due to Plaintiff under the foregoing Lease;

(c) granting judgment against the Defendants for the amount shown to be due to Plaintiff by such account;

(d) awarding interest on all amounts owed to Plaintiff, together with attorney's commission of 5% thereon and costs of collection.

COUNT II

Claim for an Accounting at Law for All Rents Due Under the Lease Dated July 24, 1987, between Edward C. Miller and Beard Oil Company

24. Plaintiff incorporates herein by reference the averments contained in Paragraphs 1 through 10 inclusive of this Complaint as if the same were set forth at length herein.

25. On July 24, 1987, Plaintiff leased the premises along Route 219 South in Sandy Township, R. D. #3, DuBois, Pennsylvania, to Defendant, BEARD OIL COMPANY, under a commercial Lease Agreement, a copy of which is attached hereto and made a part hereof as Exhibit "B".

26. The Lease provided for an initial term of ten (10) years commencing on July 24, 1987, at a monthly rental calculated at the rate of One Cent (1¢) per gallon on all gallonage delivered to the premises with the minimum rental of Six Hundred Dollars (\$600.0) per month and a maximum rental of One Thousand Dollars (\$1,000.00) per month.

27. That at no time during the term of said Lease did the Defendant, BEARD OIL COMPANY, nor any of the other Defendants, ever pay to Plaintiff more than Six Hundred Dollars (\$600.00) per month and at no time did the said Defendants ever provide the Plaintiff with any accounting of the gallonage delivered to the premises.

28. That Plaintiff believes and therefore avers that during the term of said Lease, Defendants caused to be delivered to the premises large quantities of gasoline; however, the number of gallons delivered to the premises is unknown to the Plaintiff, since the information relating thereto is in the exclusive possession and control of the Defendants.

29. Plaintiff has demanded that Defendants account to him for the amount of gallonage delivered to the premises during the term of the foregoing Lease so that Plaintiff can determine if he is entitled to more than the minimum rental provided in the Lease.

30. That Defendants have refused to account to the Plaintiff for such deliveries and have refused to pay to Plaintiff the amount due him on account of those deliveries,

31. That Plaintiff is unable to state the exact amount of rental due him, as no account has ever been rendered to him by the Defendants.

32. That in addition, Paragraph 6 of said Lease provides that the Defendants herein are to be liable to pay that portion of the real estate taxes which apply to the land or premises leased by said Agreement.

33. That Defendants never paid the real estate taxes that the Lease obligated them to pay nor did they ever reimburse the Plaintiff for the taxes due on the premises that were the subject of the Lease.

34. That the real estate taxes on the premises leased by Defendants from Plaintiff for the years that the Lease was in effect from 1987 through 1992 are as follows:

<u>YEAR</u>	<u>CO/TWP TAXES-FACE</u>	<u>SCHOOL TAXES-FACE</u>
1987	\$ 556.13	\$1,434.80
1988	\$ 578.38	\$1,612.76
1989	\$ 336.00	\$1,017.60
1990	\$ 336.00	\$1,017.60

<u>YEAR</u>	<u>CO/TWP TAXES-FACE</u>	<u>SCHOOL TAXES-FACE</u>
1991	\$ 336.00	\$1,017.60
1992	\$ 336.00	\$1,036.80

35. That in the event of any default by Defendants in the payment of any rent that was due under said Lease, Paragraph 14 allowed Plaintiff to confess judgment against Defendants for the amount of rental unpaid plus interest thereon, together with 5% attorney's commission and with costs for the collection of same.

36. Judgment has not been entered on the attached Lease in any jurisdiction.

WHEREFORE, Plaintiff, EDWARD C. MILLER, asks the Court to enter an Order:

- (a) directing the Defendants to reimburse Plaintiff for all real estate taxes paid by him during the term of the Lease, together with interest thereon from the time that said payments were due and owing, together with attorney's commission of 5% thereon and costs of collection;
- (b) directing the Defendants to account fully to the Plaintiff for all gallonage delivered to the premises during the lease term for the purposes of calculating the actual monthly rent due to Plaintiff under the foregoing Lease;
- (c) granting judgment against the Defendants for the amount shown to be due to Plaintiff by such account;
- (d) awarding interest on all amounts owed to Plaintiff, together with attorney's commission of 5% thereon and costs of collection.

COUNT III

Claim for an Accounting at Law for All Rents Due Under the Lease Dated December 31, 1992, between Edward C. Miller and J.V., INC., d/b/a Beard Oil and for Other Damages

37. Plaintiff incorporates herein by reference the averments contained in Paragraphs 1 through 10 inclusive of this Complaint as if the same were set forth at length herein.

38. On December 31, 1992, Plaintiff leased the premises along Route 219 South in Sandy Township, R. D. #3, DuBois, Pennsylvania, to Defendant, J. V., INC., d/b/a BEARD OIL, under a Commercial Lease Agreement, a copy of which is attached hereto and made a part hereof as Exhibit "C".

39. The Lease provides for an initial term of ten years commencing on December 31, 1992, through December 30, 2002, at a rate of One Cent (1¢) per gallon on all gasoline and diesel gallonage delivered to the premises with a minimum rental of SEVEN HUNDRED DOLLARS (\$700.00) per month, at a maximum rental of One Thousand Dollars (\$1,000.00)

40. That Defendants did not operate the service station for the full lease term, stopping operations at or about the end of the month of September of 1997.

41. That at no time during the term of said Lease from December 31, 1992, to September 30, 1997, did the Defendant, J. V., INC., d/b/a BEARD OIL, nor any of the other Defendants, ever pay to Plaintiff more than Seven Hundred Dollars (\$700.00) per month and at no time did the said Defendants ever provide the Plaintiff with any accounting of the gallonage delivered to the premises.

42. That Plaintiff believes and therefore avers that from December 31, 1992, to September 30, 1997, Defendants caused to be delivered to the premises large quantities of

gasoline and diesel fuel; however, the number of gallons delivered to the premises is unknown to the Plaintiff, since the information relating thereto is in the exclusive possession and control of the Defendants.

43. Plaintiff has demanded that Defendants account to him for the amount of gallonage delivered to the premises during the term of the foregoing Lease so that Plaintiff can determine if he is entitled to more than the minimum rental provided in the Lease.

44. That Defendants have refused to account to the Plaintiff for such deliveries and have refused to pay to Plaintiff the amount due him on account of those deliveries,

45. That Plaintiff is unable to state the exact amount of rental due him for the above years, as no account has ever been rendered to him by the Defendants.

46. That in addition, Paragraph 6 of said Lease provides that the Defendants herein are to be liable to pay that portion of the real estate taxes which apply to the land or premises leased by said Agreement.

47. That Defendants never paid the real estate taxes that the Lease obligated them to pay nor did they ever reimburse the Plaintiff for the taxes due on the premises that were the subject of the Lease.

48. That the real estate taxes on the premises leased by Defendants from Plaintiff for the years that the Lease was in effect from 1993 through 2002 are as follows:

<u>YEAR</u>	<u>CO/TWP TAXES-FACE</u>	<u>SCHOOL TAXES-FACE</u>
1993	\$ 336.00	\$1,036.80
1994	\$ 403.20	\$1,532.16
1995	\$ 403.20	\$1,532.16
1996	\$ 403.20	\$1,532.16
1997	\$ 403.20	\$1,550.98
1998	\$ 480.00	\$1,550.98

<u>YEAR</u>	<u>CO/TWP TAXES-FACE</u>	<u>SCHOOL TAXES-FACE</u>
1999	\$ 489.60	\$1,550.98
2000	\$ 489.60	\$1,550.98
2001	\$ 489.60	\$1,641.79
2002	\$ 489.60	\$1,641.79

49. That in the event of any default by Defendants in the payment of any rent that was due under said Lease, Paragraph 14 allowed Plaintiff to confess judgment against Defendants for the amount of rental unpaid plus interest thereon, together with 5% attorney's commission and with costs for the collection of same.

50. Judgment has not been entered on the attached Lease in any jurisdiction.

51. Defendant, J. V., INC., d/b/a BEARD OIL, took possession of the leased premises on December 31, 1992, and continued in possession until August 21, 1998, when it notified Plaintiff by letter that it no longer desired to remain in possession of said property and delivered to Plaintiff the keys therefor.

52. That the last monthly rental check paid by Defendants to Plaintiff was issued on September 11, 1997, for the month of September of 1997 and no further rental payments were made on the Lease thereafter despite the fact that Defendants remained in possession of the property and there existed an outstanding Lease obligating Defendants to make monthly payments for a period of ten (10) years or until December 31, 2002.

53. That although he has no obligation to do so, Plaintiff has been able to rent the subject premises as of June 1, 2001, for the same amount of rental per month as the minimum monthly rental due under his Lease with Defendants, to wit, \$700.00 per month but was not able to secure a lease which also obligated the new lessee to pay real estate taxes.

54. That in accordance with the terms of the Lease, whether or not Defendants actually operated the premises as a service station, Defendants continue to owe Plaintiff the minimum monthly rental due under the Lease for the following months:

3 months due for 1997	\$ 2,100.00
12 months due for 1998	\$ 8,400.00
12 months due for 1999	\$ 8,400.00
12 months due for 2000	\$ 8,400.00
5 months due for 2001	<u>\$ 3,500.00</u>
Total	\$30,800.00

55. Defendants, despite repeated demands by Plaintiff, have failed and/or refused and still refuse to pay Plaintiff the sum of \$30,800.00 or any part thereof although the Lease obligates them to make such payment.

56. By reason of Defendant's default on the rent due for the months after they ceased operation, Plaintiff is entitled to a judgment in the amount of \$30,800.00, together with interest from October 30, 1997, and, in accordance with the terms of Paragraph 14 of said Lease, 5% attorney's commission thereon together with costs of collection.

57. That Paragraph 6 of the Lease requires that the premises be surrendered to Lessor in as good a condition as it was at the time of the commencement of the Lease, reasonable wear and tear excepted.

58. That contrary to the specific obligations of the Lease, Defendants left the premises in a damaged and destroyed condition as follows:

(a) In the office, the heater coil from the baseboard heater was broken at the heater coil;

- (b) The pipes at the South wall were cut with a hacksaw at the end of the heater coil underneath the L-shaped window;
- (c) The heater line in the women's restroom was broken at the point of its entry into the concrete wall;
- (d) The water meter in the furnace room was broken;
- (e) The pressure flow valve on the West wall above the boiler unit was leaking and had to be repaired;
- (f) The drain at the bottom of the sink in the women's restroom was broken;
- (g) The faucets in the women's restroom were leaking around the knobs;
- (h) The line going to the commode in the women's restroom had been soldered and had blown apart at the solder point and was leaking;

59. That as a result of the damages done by Defendants, the Plaintiff had to incur repair costs in the amount of SEVEN HUNDRED DOLLARS (\$700.00).

60. That in addition to the damages caused by Defendants, they left the premises in a dirty and unkempt condition in violation of the requirements of the Lease, requiring the Plaintiff to expend the sum of ONE HUNDRED FIFTY DOLLARS (\$150.00) to clean the premises.

61. That contrary to the specific obligations of the Lease and the laws of the Commonwealth of Pennsylvania and the United States of America, Defendants installed a steel diesel tank which Plaintiff believes and therefore avers was never approved by the Pennsylvania Department of Environmental Protection.

62. That contrary to the specific obligations of the Lease and the laws of the Commonwealth of Pennsylvania and the United States of America, Defendants did continually and repeatedly overfill the tanks that Defendants maintained on Plaintiff's premises causing excess gasoline and diesel fuel to continually and repeatedly overflow into and upon the subject premises causing the area to become contaminated in violation of law.

63. That as a result of the improper actions of the Defendants, Plaintiff was caused to remove the tanks and dispose of the same and to perform other actions required by the Pennsylvania Department of Environmental Protection that were the responsibility of Defendants as follows:

B.K. Asphalt Paving Co., Inc.	\$ 3,600.00
Brockway Analytical & Environmental Services, LTD	1,985.00
Superior Green Tree Land Fill, LLC	2,665.26
Tank Disposal Co., Inc.	1,325.00
Alan Groves, backhoe & trucking	980.00
S.M.S. Tank Disposal Co., Inc.	350.00
Groves Excavating	4,750.00
Brockway Analytical & Environmental Services, LTD, lab analysis	<u>150.00</u>
TOTAL	\$15,805.26

True and correct copies of the payments made are attached hereto and made a part hereof as Plaintiff's Exhibit D-1 through 8 inclusive.

64. Despite repeated demands by Plaintiff to Defendants for payment of the monies due to him for the damages he has suffered, Defendants have wholly refused to make such payment.

WHEREFORE, Plaintiff, EDWARD C. MILLER, asks the Court to enter an Order:

(a) directing the Defendants to reimburse Plaintiff for all real estate taxes paid by him during the term of the Lease, together with interest thereon from the time that said payments were due and owing, together with 5% attorney's commission and costs of collection;

(b) directing the Defendants to account fully to the Plaintiff for all gallonage delivered to the premises during the lease term for the purposes of calculating the actual monthly rent due to Plaintiff under the foregoing Lease;

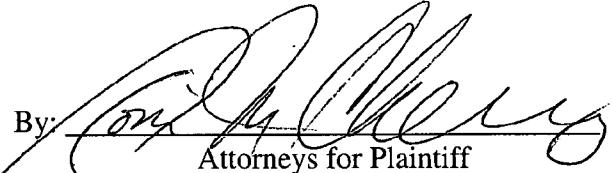
(c) granting judgment against the Defendants for the amount shown to be due to Plaintiff by such account, together with interest thereon as well as 5% attorney's commission thereon and costs of collection;

(d) directing the Defendants to pay to Plaintiff the sum of \$30,800.00 in unpaid minimum rental payments for the period of October 1, 1997, to June 1, 2001, together with interest thereon, 5% attorney's commission thereon and costs of collection;

(e) Judgment in the amount of \$16,655.26, together with interest and costs of suit.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

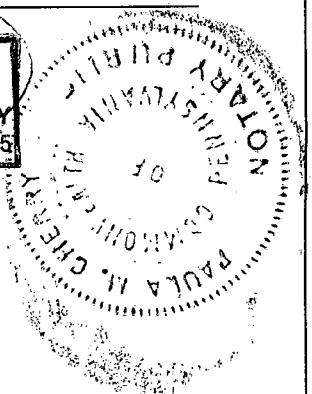
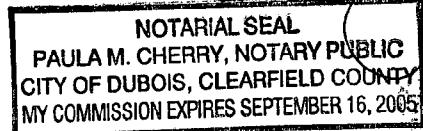
By: 
John P. Gleason
Attorneys for Plaintiff

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :

Personally appeared before me, a Notary Public in and for the County and State aforesaid, EDWARD C. MILLER, who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Edward C. Miller
Edward C. Miller

Sworn to and subscribed before me this 21st day of May, 2004.



AGREEMENT

THIS AGREEMENT, made and entered into this 1 day
of October, 1981, by and between EDWARD C. MILLER,
of Sandy Township, Clearfield County, Pennsylvania, hereinafter
called the "Lessor",

A
N
D

BEARD OIL COMPANY, INC., of R. D. # 4, Clearfield, Pennsylvania,
hereinafter called the "Lessee".

W I T N E S S E T H :

That the Lessor does hereby demise and let unto the
Lessee all of that certain piece or parcel of ground situate in
the Township of Sandy, Clearfield County, Pennsylvania, being
bounded and described as follows:

BEGINNING at a point 250 feet North, adjacent Route
219 right of way, of South East corner of Martha Francis
Miller property; thence in a straight line, at a 90
degree angle to Rt. 219, 125 feet West to a second point;
thence in a straight line, at a 90 degree angle to South
boundary and parallel to Rt. 219, 157 feet North to a
third point; thence in a straight line, at a 90 degree
angle to West boundary and parallel to South boundary,
East 125 feet to a fourth point; thence in a straight
line, adjacent Rt. 219 right of way, 157 feet South to
point of beginning.

The above described parcel of land having erected thereon
a service station facility, it being the intention to
lease that portion of the property of the Lessors which is
now used as a service station facility.

TOGETHER with the right of ingress and egress upon said
property.

TO HAVE AND TO HOLD said premises for a term of five (5) calendar years from the date hereof. Upon the expiration of said five year period, it is agreed that this agreement shall be automatically renewable for a one year period and so on from year to year unless either the Lessor or the Lessee herein shall desire to renegotiate the terms of the within agreement. The desire to renegotiate the terms of the agreement shall be given by either the Lessor or the Lessee in writing at least thirty (30) days in advance. Renegotiating of the terms of this agreement shall not be permitted until the expiration of the initial five (5) year period. The rental for the said premises shall be payable in advance, effective October 1, 1981, and payable at the rate of One Cent (1¢) per gallon on all gallonage delivered to the premises with a minimum rental of Five Hundred and no/100 (\$500.00) Dollars per month and a maximum rental of One Thousand and no/100 (\$1,000.00) Dollars per month. Should there be a restriction or embargo on the number of gallons available to the Lessee, then the rental of One Cent (1¢) per gallon shall be proportionately reduced. The Lessee, however, shall be liable to pay the minimum base rental of Five Hundred and no/100 (\$500.00) Dollars per month to the Lessor.

The Lessor and Lessee further expressly covenant and agree as follows:

1. That the Lessee has the right to construct or alter building or buildings on said premises and pave the service

area at its own obligation and expense, after first obtaining consent of the Lessor.

2. That both parties to this instrument shall have the right and option at the exact expiration of five (5) calendar years from date, or any renewal thereof, and upon giving at least ninety (90) days written notice of their intention to do so, to terminate this agreement. In the event of any cancellation or termination of this Lease by the Lessor, the Lessor agrees to pay the Lessee the value of the driveways, pump islands and fill and curbing. In addition, the Lessor shall have an option to purchase all other machinery, apparatus and equipment furnished by the Lessee and located on said premises at the price of installed operating equipment as used by major oil companies in effect on the date of purchase provided sixty (60) days written notice is given to the Lessee. It is expressly understood that the value to be paid by the Lessor for any of the items mentioned herein shall be the cost of the same as paid by the Lessee, less depreciation on equipment or driveways, pump islands, etc. from the date of installation of the same of July, 1976, or any later date on replacement or new equipment. In any event, the purchase price shall not exceed the book value of the item as carried on the books and records of Lessee.

3. Should this lease be terminated by the Lessee, it shall have the right to remove all movable above the ground equipment, and in such case, the said Lessee surrenders unto the Lessor all its right, title and interest in the improvements

permanently attached to the ground or buried underground.

4. In the event the said Lessor should desire to make a bonafide sale of the premises to any one other than the said Lessee, the said Lessee shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale, to purchase said premises upon the same terms and conditions of sale which have been offered to the said Lessor.

5. In the event the said Lessee should desire to make a bonafide sale or assignment of its interest in this agreement to anyone other than the said Lessor, the said Lessor shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale or assignment, to purchase Lessee's interest in this agreement upon the same terms and conditions of sale or assignment which have been offered to the said Lessee.

6. The Lessee shall pay the rent as aforesaid and all charges for water, gas and electricity supplied to said Lessee and at the termination of this lease, or any renewal or extension thereof, quit and surrender the said premises to the Lessor in as good a condition as the same now are, reasonable wear and tear and damage by the elements or conditions beyond Lessee's control excepted. The Lessee herein shall be liable to pay that portion of the real estate taxes which apply to the land or premises hereby leased.

7. Should the Sandy Township Sewer Authority assess the land hereby leased with a sewer assessment or tap-in fee,

the Lessee will assume the responsibility thereof, provided, however, if the lease is terminated, the Lessor or his assignee or new Lessee shall reimburse the Lessee herein, for that portion of the cost remaining based on a twenty (20) year amortization.

8. The Lessee shall comply with all applicable laws and ordinances relating to the health, nuisance and fire, and save the Lessor harmless from non-compliance with same by the said Lessee.

9. The Lessee may erect and install on said premises such buildings, improvements and equipment as it may require for the conduct of its business thereof, may cut curbs, remove trees, construct, maintain and use driveways over, upon and across said premises for ingress and egress of vehicles and persons and generally exercise all easements and rights incident to the conduct of a general service station business, all of which operations by the Lessee shall be subject to and in compliance with municipal, state and federal regulations affecting the same. The Lessee shall maintain and keep in repair all sidewalks, curbs and its driveway on and along the said premises.

10. All buildings and permanent improvements placed upon and in the premises shall become a part of the real estate immediately and shall not be removed, provided, however, that all detachable equipment and fixtures installed or owned by the Lessee that can be removed without damage to the buildings shall not become a part of the real estate but shall be and remain the property of the Lessee and it may detach or remove the same from the premises during the term of this lease or

any renewal thereof. In the event the said Lessee should fail or neglect to remove any or all of the said equipment or fixtures before the termination of this lease or any subsequent renewal of the same, the said property not so removed shall thereupon become a part of the real estate and shall not thereafter be removed by the Lessee.

11. If at any time after the original five (5) year term of this lease or any renewal or extension thereof, the Lessee or any of its subtenants are unable to obtain any license or permit as required by law or municipal ordinance for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, on said premises, or for the erection and operation thereon of a gasoline service station of the type and capacity applied for and with driveways by Lessee to and from all streets and highways abutting on said premises, or is unable to obtain the renewal of any such licenses or permit which may have been granted for any purpose, or if any existing license or permit shall be revoked or cancelled, or if the Lessee is prevented by operation of law, or by damage or destruction to the improvements on the premises, or otherwise enjoined, from using the said premises or any part of the same for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, the Lessee shall have the right, at its option, to terminate this lease on thirty (30) days notice to the Lessor.

12. If any part of the premises shall be taken for public or quasi-public use by condemnation proceedings, and which taking adversely affect the business, the Lessee, in addition to other rights granted by law, shall have the right, at its option, to terminate this lease upon ten (10) days notice to the Lessor at any time within thirty (30) days after the Lessee shall be required to surrender possession of the part so taken.

13. If the Lessor shall fail to pay when due any rent, tax assessments, interest on or principal of any mortgage or other obligation, expense or charge, or perform any act for which the Lessor is responsible, or which is necessary to be paid or performed by the Lessor, in order that the Lessee may have, hold and enjoy the premises, the Lessee may pay or perform the same and charge the Lessor with the cost therefor and deduct such cost from any rental or other sum that might be due or become due from the Lessee to the said Lessor, and in addition thereto, the Lessee shall be entitled to all right or subrogation granted by the law, and in the event of any foreclosure of any mortgage or lien, the Lessee may purchase the premises for its own account.

14. In the event the Lessee shall be in default of any payment of rent herein provided, the Lessor may thereupon give to the said Lessee ten (10) days written notice of such default and at the expiration of said time the Lessee, if the amount of rental still remains unpaid, does authorize any

attorney of record in the State of Pennsylvania to appear for it and to confess judgment against it for said amount of rental unpaid and interest, with five (5%) per cent attorney's commission and with costs for the collection of same, waiving all exemption laws in force or hereafter to be passed and/or upon the said default and notice in writing as aforesaid does further authorize any such attorney to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which said judgment a writ of possession may be issued forthwith.

15. Upon the failure of the Lessee to keep and perform any other of the covenants and provisions herein contained, the Lessor may thereupon give to the said Lessee twenty (20) days written notice by registered mail specifying such failure and, at the expiration of the said time if the said default or failure has not then been corrected, the Lessee does further authorize any attorney of any Court of Record to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which judgment a writ of possession may issue forthwith.

16. Lessee agrees to be responsible for and to relieve and hereby relieves the Lessor from all liability by reason of any injury or damage to any person or property in or on the demised premises and on the sidewalks, driveways and approaches

to the said premises resulting from any accident or from any cause of reason whatsoever, except damages resulting from acts of God or from circumstances beyond the control of the Lessee.

17. The Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

18. The covenants and agreements contained in the lease executed herewith are binding upon the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals and/or caused its or their corporate name and seal to be affixed the day and year aforesaid.

Edward C. Miller (SEAL)
Edward C. Miller

BEARD OIL COMPANY, INC.

By John F. Beard
Executive Vice President

ATTEST:

Asst. Secretary

COMMONWEALTH OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :
:

On this the 9th day of October, 1981, before me, the undersigned officer, personally appeared EDWARD C. MILLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

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

Anna R. Weber

ANNA R. WEBER, NOTARY PUBLIC
BROCKWAY BOROUGH, JEFFERSON COUNTY
MY COMMISSION EXPIRES DEC. 24, 1983
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :
:

On this the 8th day of October, 1981, before me, the undersigned officer, personally appeared JOHN F. BEARD who acknowledged himself to be the Executive Vice President of BEARD OIL COMPANY, INC., a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

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

Merritt L. Edner

-10-

MERRITT L. EDNER, NOTARY PUBLIC
DUBOIS, CLEARFIELD COUNTY
MY COMMISSION EXPIRES MAY 22, 1984
Member, Pennsylvania Association of Notaries

Exct 16, DuBais
lease 7/24/87

(B)

AGREEMENT

THIS AGREEMENT, made and entered into this 24th day of
July, 1987, by and between EDWARD C. MILLER, of Sandy Township,
Clearfield County, Pennsylvania, hereinafter called the "Lessor",

A

N

D

BEARD OIL COMPANY, of R.D.# 4, Clearfield, Pennsylvania, hereinafter called
the "Lessee".

W I T N E S S E T H :

That the Lessor does hereby demise and let unto the Lessee all of that
certain piece or parcel of ground situate in the Township of Sandy, Clearfield
County, Pennsylvania, being bounded and described as follows:

BEGINNING at a point 250 feet North, adjacent Route 219 right of way,
of South East corner of Martha Francis Miller property; thence in a
straight line, at a 90 degree angle to Rt. 219, 125 feet West to a
second point; thence in a straight line, at a 90 degree angle to South
boundary and parallel to Rt. 219, 157 feet North to a third point;
thence in a straight line, at a 90 degree angle to West boundary and
parallel to South boundary, East 125 feet to a fourth point; thence
in a straight line, adjacent Rt. 219 right of way, 157 feet South to
point of beginning.

The above described parcel of land having erected thereon a service station
facility, it being the intention to lease that portion of the property of the
Lessors which is now used as a service station facility. Together with the
right of ingress and egress upon said property.

TO HAVE AND TO HOLD said premises for a term of ten (10) calendar
years from the date hereof. Upon the expiration of said ten year period,
it is agreed that this agreement shall be automatically renewable for a five
(5) year period, then for a one year period and so on from year to year unless
either the Lessor or the Lessee herein shall desire to renegotiate the terms
of the within agreement. The desire to renegotiate the terms of the agreement
shall be given by either the Lessor or the Lessee in writing at least thirty
(30) days in advance. Renegotiating of the terms of this agreement shall not

be permitted until the expiration of the initial ten (10) year period. The rental for the said premises shall be payable in advance, effective August 1, 1987, and payable at the rate of One Cent (1¢) per gallon on all gallonage delivered to the premises with a minimum rental of Six Hundred and no/100 (\$600.00) Dollars per month and a maximum rental of One Thousand and no/100 (\$1,000.00) Dollars per month. Should there be a restriction or embargo on the number of gallons available to the Lessee, then the rental of One Cent (1¢) per gallon shall be proportionately reduced. The Lessee, however, shall be liable to pay the minimum base rental of Six Hundred and no/100 (\$600.00) Dollars per month to the Lessor.

The Lessor and Lessee further expressly covenant and agree as follows:

1. That the Lessee has the right to construct or alter building or buildings on said premises and pave the service area at its own obligation and expense, after first obtaining consent of the Lessor.

2. That both parties to this instrument shall have the right and option at the exact expiration of ten (10) calendar years from date, or any renewal thereof, and upon giving at least ninety (90) days written notice of their intention to do so, to terminate this agreement. In the event of any cancellation or termination of this Lease by the Lessor, the Lessor agrees to pay the Lessee the value of the driveways, pump islands and fill and curbing. In addition, the Lessor shall have an option to purchase all other machinery, apparatus and equipment furnished by the Lessee and located on said premises at the price of installed operating equipment as used by major oil companies in effect on the date of purchase provided sixty (60) days written notice is given to the Lessee. It is expressly understood that the value to be paid by the Lessor for any of the items mentioned herein shall be the cost of the same as paid by the Lessee, less depreciation on equipment or driveways, pump islands, etc. from the date of installation of the same of July, 1976, or any later date on replacement or new equipment. In any event, the purchase price shall not exceed the book value of the item as carried on the books and records of Lessee.

3. Should this lease be terminated by the Lessee, it shall have the right to remove all movable above the ground equipment, and in such case, the said Lessee surrenders unto the Lessor all its right, title and interest in the improvements permanently attached to the ground or buried underground.

4. In the event the said Lessor should desire to make a bonafide sale of the premises to any one other than the said Lessee, the said Lessee shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale, to purchase said premises upon the same terms and conditions of sale which have been offered to the said Lessor.

5. In the event the said Lessee should desire to make a bonafide sale or assignment of its interest in this agreement to anyone other than the said Lessor, the said Lessor shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale or assignment, to purchase Lessee's interest in this agreement upon the same terms and conditions of sale or assignment which have been offered to the said Lessee.

6. The Lessee shall pay the rent as aforesaid and all charges for water, gas and electricity supplied to said Lessee and at the termination of this lease, or any renewal or extension thereof, quit and surrender the said premises to the Lessor in as good a condition as the same now are, reasonable wear and tear and damage by the elements or conditions beyond Lessee's control excepted. The Lessee herein shall be liable to pay that portion of the real estate taxes which apply to the land or premises hereby leased.

7. Should the Sandy Township Sewer Authority assess the land hereby leased with a sewer assessment or tap-in fee, the Lessee will assume the responsibility thereof, provided, however, if the lease is terminated, the Lessor or his assignee or new Lessee shall reimburse the Lessee herein, for that portion of the cost remaining based on a twenty (20) year amortization.

8. The Lessee shall comply with all applicable laws and ordinances relating to the health, nuisance and fire, and save the Lessor harmless from non-compliance with same by the said Lessee.

9. The Lessee may erect and install on said premises such buildings, improvements and equipment as it may require for the conduct of its business thereof, may cut curbs, remove trees, construct, maintain and use driveways over, upon and across said premises for ingress and egress of vehicles and persons and generally exercise all easements and rights incident to the conduct of a general service station business, all of which operations by the Lessee shall be subject to and in compliance with municipal, state and federal regulations affecting the same. The Lessee shall maintain and keep in repair all sidewalks, curbs and its driveway on and along the said premises.

10. All buildings and permanent improvements placed upon and in the premises shall become a part of the real estate immediately and shall not be removed, provided, however, that all detachable equipment and fixtures installed or owned by the Lessee that can be removed without damage to the buildings shall not become a part of the real estate but shall be and remain the property of the Lessee and it may detach or remove the same from the premises during the term of this lease or any renewal thereof. In the event the said Lessee should fail or neglect to remove any or all of the said equipment or fixtures before the termination of this lease or any subsequent renewal of the same, the said property not so removed shall thereupon become a part of the real estate and shall not thereafter be removed by the Lessee.

11. If at any time after the original ten (10) year term of this lease or any renewal or extension thereof, the Lessee or any of its subtenants are unable to obtain any license or permit as required by law or municipal ordinance for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, on said premises, or for the erection and operation thereon of a gasoline service station of the type and capacity applied for and with driveways by Lessee to and from all streets and highways abutting on said premises, or is unable to obtain the renewal of any such licenses or permit which may have been granted for any purpose, or if any existing license or permit shall be revoked or cancelled, or if the Lessee is prevented by operation of law, or by damage or destruction to the improvements on the premises, or otherwise enjoined, from using the said premises or any part of the same for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, the Lessee shall have the right, at its option, to terminate this lease on thirty (30) days notice to the Lessor.

12. If any part of the premises shall be taken for public or quasi-public use by condemnation proceedings, and which taking adversely affect the business, the Lessee, in addition to other rights granted by law, shall have the right, at its option, to terminate this lease upon ten (10) days notice to the Lessor or any time within thirty (30) days after the Lessee shall be required to surrender possession of the part so taken.

13. If the Lessor shall fail to pay when due any rent, tax assessments, interest on or principal of any mortgage or other obligation, expense or charge, or perform any act for which the Lessor is responsible,

or which is necessary to be paid or performed by the Lessor, in order that the Lessee may have, hold and enjoy the premises, the Lessee may pay or perform the same and charge the Lessor with the cost therefor and deduct such cost from any rental or other sum that might be due or become due from the Lessee to the said Lessor, and in addition thereto, the Lessee shall be entitled to all right or subrogation granted by the law, and in the event of any foreclosure of any mortgage or lien, the Lessee may purchase the premises for its own account.

14. In the event the Lessee shall be in default of any payment of rent herein provided, the Lessor may thereupon give to the said Lessee ten (10) days written notice of such default and at the expiration of said time the Lessee, if the amount of rental still remains unpaid, does authorize any attorney of record in the State of Pennsylvania to appear for it and to confess judgment against it for said amount of rental unpaid and interest, with five (5%) per cent attorney's commission and with costs for the collection of same, waiving all exemption laws in force or hereafter to be passed and/or upon the said default and notice in writing as aforesaid does further authorize any such attorney to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which said judgment a writ of possession may be issued forthwith.

15. Upon the failure of the Lessee to keep and perform any other of the covenants and provisions herein contained, the Lessor may thereupon give to the said Lessee twenty (20) days written notice by registered mail specifying such failure and, at the expiration of the said time if the said default or failure has not then been corrected, the Lessee does further authorize any attorney of any Court of Record to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which judgment a writ of possession may issue forthwith.

16. Lessee agrees to be responsible for and to relieve and hereby relieves the Lessor from all liability by reason of any injury or damage to any person or property in or on the demised premises and on the sidewalks, driveways and approaches to the said premises resulting from any accident or from any cause of reason whatsoever, except damages resulting from acts of God or from circumstances beyond the control of the Lessee.

17. The Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

18. The covenants and agreements contained in the lease executed herewith are binding upon the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals and/or caused its or their corporate name and seal to be affixed the day and year aforesaid.

Edward C. Miller (SEAL)

Edward C. Miller

BEARD OIL CO.

By John F. Beard

President

ATTEST:

Secretary

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :

On this the 24 day of July, 1987, before me, the undersigned officer, personally appeared EDWARD C. MILLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

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



HOMER D. EDNER, NOTARY PUBLIC
CLEARFIELD COUNTY
MY COMMISSION EXPIRES NOV. 20, 1988
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :

On this the 24 day of July, 1987, before me, the undersigned officer, personally appeared JOHN F. BEARD who acknowledged himself to be the President of BEARD OIL CO., a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

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



HOMER D. EDNER, NOTARY PUBLIC
CLEARFIELD COUNTY
MY COMMISSION EXPIRES NOV. 20, 1988
Member, Pennsylvania Association of Notaries

Original

AGREEMENT

P.O.
EXIT 16, Du No. 5
Miller to Beard Oil
12/31/92 - 12/31/02

THIS AGREEMENT, made and entered into this 31st day of December, 1992, by and between EDWARD C. MILLER, of Sandy Township, Clearfield County, Pennsylvania, hereinafter called the "Lessor",

A
N
D

J.V., INC. d/b/a BEARD OIL, of RD #4, Clearfield, Pennsylvania, hereinafter called the "Lessee".

WITNESSETH:

That the Lessor does hereby demise and let unto the Lessee all of that certain piece of parcel of ground situate in the Township of Sandy, Clearfield County, Pennsylvania, being bounded and described as follows:

BEGINNING at a point 250 feet North, adjacent Route 219 right of way, of South East corner of Martha Francis Miller property; thence in a straight line, at a 90 degree angle to Route 219, 125 feet West to a second point; thence in a straight line at a 90 degree angle to South boundary and parallel to Route 219, 157 feet North to a third point; thence in a straight line, at a 90 degree angle to West boundary and parallel to South boundary, East 125 feet to a fourth point; thence in a straight line, adjacent Route 219 right of way, 157 feet South to point of beginning.

The above described parcel of land having erected thereon a service station facility, it being the intention to lease that portion of the property of the Lessors which is now used as a service station facility. Together with the right of ingress and egress upon said property.

TO HAVE AND TO HOLD said premises for a term of ten (10) calendar years from the date hereof. Upon the expiration of said ten year period, it is agreed that this agreement shall be automatically renewable for a five (5) year period, then for a one year period and so on from year to year unless either the Lessor or the Lessee herein shall desire to renegotiate the terms of the within agreement. The desire to renegotiate the terms of the agreement shall be given by either the Lessor or the Lessee in writing at least thirty (30) days in advance. Renegotiating of the terms of this agreement shall not be permitted until the expiration of the initial ten (10) year period. The rental for the said premises shall be payable in advance and payable at the rate of One Cent (\$.01) per gallon on all Gasoline and Diesel gallonage delivered to the premises with a minimum rental of Seven Hundred and no/100 (\$700.00) Dollars per month and a maximum rental of One Thousand and no/100 (\$1,000.00) Dollars per month. Should there be a restriction or embargo on the number of gallons available to the Lessee, then the rental of One Cent (\$.01) per gallon shall be proportionately reduced. The Lessee, however, shall be liable to pay the minimum base rental of Seven Hundred and no/100 (\$700.00) Dollars per month to the Lessor.

The Lessor and Lessee further expressly covenant and agree as follows:

1. That the Lessee has the right to construct or alter building or buildings on said premises and pave the service area at its own obligation and expense, after first obtaining consent of the Lessor.

2. That both parties to this instrument shall have the right and option at the exact expiration of ten (10) calendar years from date, or any renewal thereof, and upon giving at least ninety (90) days written notice of their intention to do so, to terminate this agreement. In the event of any cancellation or termination of this Lease by the Lessor, the Lessor agrees to pay the Lessee the value of the driveways, pump islands and fill and curbing. In addition, the Lessor shall have an option to purchase all other machinery, apparatus and equipment furnished by the Lessee and located on said premises at the price of installed operating equipment as used by major oil companies in effect on the date of purchase provided sixty (60) days written notice is given to the Lessee. It is expressly understood that the value to be paid by the Lessor for any of the items mentioned herein shall be the cost of the same as paid by the Lessee, less depreciation on equipment of driveways, pump islands, etc. from the date of installation of the same of July, 1976, or any later date on replacement or new equipment. In any event, the purchase price shall not exceed the book value of the item as carried on the books and records of Lessee.

3. Should this lease be terminated by the Lessee, it shall have the right to remove all movable above the ground equipment, and in such case, the said Lessee surrenders unto the Lessor all its right, title and interest in the improvements permanently attached to the ground or buried underground.

4. In the event the said Lessor should desire to make a bona fide sale of the premises to any one other than the said Lessee, the said Lessee shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale, to purchase said premises upon the same terms and conditions of sale which have been offered to the said Lessor.

5. In the event the said Lessee should desire to make a bona fide sale or assignment of its interest in this agreement to anyone other than the said Lessor, the said Lessor shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale or assignment, to purchase Lessee's interest in this agreement upon the same terms and conditions of sale or assignment which have been offered to the said Lessee.

6. The Lessee shall pay the rent as aforesaid and all charges for water, gas and electricity supplied to said Lessee and at the termination of this lease, or any renewal or extension thereof, quit and surrender the said premises to the Lessor in as good a condition as the same now are, reasonable wear and tear and damage by the elements or conditions beyond Lessee's control excepted. The Lessee herein shall be liable to pay that portion of the real estate taxes which apply to the land or premises hereby leased.

7. Should the Sandy Township Sewer Authority assess the land hereby leased with a sewer assessment or tap-in fee, the Lessee will assume the responsibility thereof, provided, however, if the lease is terminated, the Lessor or his assignee or new Lessee shall reimburse the Lessee herein, for that portion of the cost remaining based on twenty (20) year amortization.

8. The Lessee shall comply with all applicable laws and ordinances relating to the health, nuisance and fire, and save the Lessor harmless from non-compliance with same by the said Lessee.

9. The Lessee may erect and install on said premises such buildings, improvements and equipment as it may require for the conduct of its business thereof, may cut curbs, remove trees, construct, maintain and use driveways over, upon and across said premises for ingress and egress of vehicles and persons and generally exercise all easements and rights incident to the conduct of a general service station business, all of which operations by the Lessee shall be subject to and in compliance with municipal, state and federal regulations affecting the same. The Lessee shall maintain and keep in repair all sidewalks, curbs and its driveway or and along the said premises.

10. All buildings and permanent improvements placed upon and in the premises shall become a part of the real estate immediately and shall not be removed, provided, however, that all detachable equipment and fixtures installed or owned by the Lessee that can be removed without damage to the buildings shall not become a part of the real estate but shall be and remain the property of the Lessee and it may detach or remove the same from the premises during the term of this lease or any renewal thereof. In the event the said Lessee should fail or neglect to remove any or all of the said equipment or fixtures before the termination of this lease or any subsequent renewal of the same, the said property not so removed shall thereupon become a part of the real estate and shall not thereafter be removed by the Lessee.

11. If at any time after the original ten (10) year term of this lease or any renewal or extension thereof, the Lessee or any of its subtenants are unable to obtain any license or permit as required by law or municipal ordinance for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, on said premises, or for the erection and operation thereon of a gasoline service station of the type and capacity applied for and with driveways by Lessee to and from all streets and highways abutting on said premises, or is unable to obtain the renewal of any such licenses or permit which may have been granted for any purpose, or if any existing license or permit shall be revoked or cancelled or if the Lessee is prevented by operation of law, or by damage or destruction to the improvements on the premises, or otherwise enjoined, from using the said premises or any part of the same for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, the Lessee shall have the right, at its option, to terminate this lease on thirty (30) days notice to the Lessor.

12. If any part of the premises shall be taken for public or quasi-public use by condemnation proceedings, and which taking adversely affect the business, the Lessee, in addition to other rights granted by law, shall have the right, at its option, to terminate this lease upon ten (10) days notice to the Lessor or any time within thirty (30) days after the Lessee shall be required to surrender possession of the part so taken.

13. If the Lessor shall fail to pay when due any rent, tax assessments, interest on or principal of any mortgage or other obligation, expense or charge, or perform any act for which the Lessor is responsible, or which is necessary to be paid or performed by the Lessor, in order that the Lessee may have, hold and enjoy the premises, the Lessee may pay or perform the same and charge the Lessor with the cost therefor and deduct such cost from any rental or other sum that might be due or become due from the Lessee to the said Lessor, and in addition thereto, the Lessee shall be entitled to all right or subrogation granted by the law, and in the event of any foreclosure of any mortgage or lien, the Lessee may purchase the premises for its own account.

14. In the event the Lessee shall be in default of any payment of rent herein provided, the Lessor may thereupon give to the said Lessee ten (10) days written notice of such default and at the expiration of said time the Lessee, if the amount of rental still remains unpaid, does authorize any attorney of record in the State of Pennsylvania to appear for it and to confess judgment against it for said amount of rental unpaid and interest, with five (5%) percent attorney's commission and with costs for the collection of same, waiving all exemption laws in force or hereafter to be passed and/or upon the said default and notice in writing as aforesaid does further authorize any such attorney to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which said judgment a writ of possession may be issued forthwith.

15. Upon the failure of the Lessee to keep and perform any other of the covenants and provisions herein contained, the Lessor may thereupon give to the said Lessee twenty (20) days written notice by registered mail specifying such failure and, at the expiration of the said time if the said default or failure has not then been corrected, the Lessee does further authorize any attorney of any Court of Record to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which judgment a writ of possession may issue forthwith.

16. Lessee agrees to be responsible for and to relieve and hereby relieves the Lessor from all liability by reason of any injury or damage to any person or property in or on the demised premises and on the sidewalks, driveways and approaches to the said premises resulting from any accident or from any cause of reason whatsoever, except damages resulting from acts of God or, from circumstances beyond the control of the Lessee.

17. The Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

18. The covenants and agreements contained in the lease executed herewith are binding upon the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals and/or caused its or their corporate name and seal to be affixed the day and year aforesaid.

Edward C. Miller
Edward C. Miller

BEARD OIL COMPANY

By Dale H. Haggie
Title Vice-President

ATTEST:

J. L. Adams
Secretary

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :

On this 24th day of _____, 1992, before me, the undersigned officer, personally appeared EDWARD C. MILLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

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

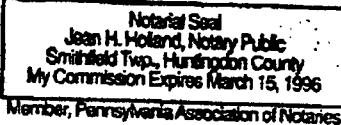
COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :

On this 24th day of December, 1992, before me, the undersigned officer, personally appeared Daniel Parise, who acknowledged himself to be the Officer of BEARD OIL COMPANY, a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

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



17. The Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

18. The covenants and agreements contained in the lease executed herewith are binding upon the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals and/or caused its or their corporate name and seal to be affixed the day and year aforesaid.

Edward C. Miller

Edward C. Miller

BEARD OIL COMPANY

By Dale Hoffer

Title Vice-President

ATTEST:

J. L. Alanson
Secretary

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD

On this 24th day of December, 1992, before me, the undersigned officer, personally appeared EDWARD C. MILLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

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

COMMONWEALTH OF PENNSYLVANIA:

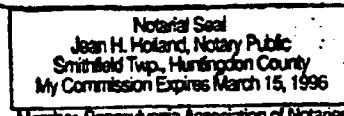
: SS

COUNTY OF CLEARFIELD

On this 24th day of December, 1992, before me, the undersigned officer, personally appeared Dale D. Price, who acknowledged himself to be the Vice President of BEARD OIL COMPANY, a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

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

Jean N Holland





2076

REMITTER
Edward Miller

60-1013/433

PAYABLE TO

B.K. ASPHALT PAVING, INC.

May 13, 2002

3,600.00

NOT NEGOTIABLE

3600.00

CASHIER'S CHECK

MEMORANDUM

FOR

#002076 10433101391 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1893

REMITTER
Miller

60-1013/433

PAYABLE TO

BROCKWAY ANALYTICAL & ENVIRONMENTAL SERVICES, LTD.

Dec. 8, 2001

1,935.00

NOT NEGOTIABLE

1935.00

CASHIER'S CHECK

MEMORANDUM

FOR

#001893 10433101391 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1903

REMITTER

60-1013/433

PAYABLE TO

SUPERIOR GREENTREE LANDFILL, LLC

12-18-01

2,665.26

NOT NEGOTIABLE

2665.26

CASHIER'S CHECK

MEMORANDUM

FOR

#001903 10433101391 11210003

EXHIBIT "D" 1 through 8



1754

60-1013433

REMITTER Miller

June 22, 2001

PAYABLE TO

TANK DISPOSAL COMPANY, INC.

1,325.00

NOT NEGOTIABLE

1,325.00

MEMORANDUM

CASHIER'S CHECK

FOR

#001754 10433101391 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



2014

REMITTER Miller/backhoe & trucking

60-1013433

March 20, 2002

PAYABLE TO

ALAN GROVES

980.00

NOT NEGOTIABLE

980.00

MEMORANDUM

CASHIER'S CHECK

FOR

#002014 10433101391 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1892

REMITTER Miller

60-1013433

Dec. 8, 2001

PAYABLE TO

S.M.S. TANK DISPOSAL CO., INC.

350.00

NOT NEGOTIABLE

350.00

MEMORANDUM

CASHIER'S CHECK

FOR

#001892 10433101391 11210003

BROCKWAY ANALYTICAL AND ENVIRONMENTAL SERVICES, LTD.**110 McCracken Run Road
DuBois, PA 15801****814-371-6030 Fax: 814-375-0823***Invoice..***Invoice Number:**

L4146

Invoice Date:

Jan 4, 2002

Page:

1

Sold To:

Ed Miller
RR #3, Box 274
DuBois, PA 15801

Ship To:

Ed Miller
RR #3, Box 274
DuBois, PA 15801

Customer ID

MCC113

Customer PO**Payment Terms**

Net 30 Days

Sales Rep ID**Project Number****Discount Date****Due Date**

1/4/02

2/3/02

Description

SOIL
LAB ORDER: 0112049
COLLECTION DATE: 12/7/01

Quantity	Item	Description	Unit Price	Extension
1.00		LAB ANALYSIS	150.00	150.00

BAES APPROVAL _____**Check No:**

*Paid 1/25/02
By check
Sent mail
1/25/02*

Subtotal	150.00
Sales Tax	
Total Invoice Amount	150.00
Payment Received	0.00
TOTAL	150.00

Overdue invoices are subject to finance charges.

STATEMENT

GROVES EXCAVATING

R.D. 1, Box 252
FALLS CREEK, PA 15840
(814) 371-3037

DATE 9/4/01

Miller's Motel
R.D. #3
DuBois, PA 15801

DATE	DESCRIPTION	CHARGES
5/24	Repair Waterline	\$ 250.00
6/15- 6/22	Tank Removal - Bill to Date	4,500.00
	TOTAL	\$4,750.00
	<i>Paid in full</i>	
	<i>9/10/01</i>	

Thank You Service Charge: 1½% per month after 30 days PAID BY CHECK NO.

CA

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

EDWARD C. MILLER,	:
	:
Plaintiff	:
	:
v.	:
	No. 2004-451 C.D.
	:
BEARD OIL COMPANY; BEARD OIL	:
COMPANY, INC.; J.V. INC., d/b/a	:
BEARD OIL; J.V. INC., d/b/a SHANER	:
ENERGY; SHANER ENERGY, INC.;	:
and SHANER OPERATING CORP.,	:
t/d/b/a SHANER HOTEL GROUP,	:
Defendants	:
	:

RULE TO SHOW CAUSE

AND NOW, this 22nd day of June, 2004, upon consideration of Defendants' Preliminary Objections to Plaintiff Edward C. Miller's Complaint, a Rule is hereby entered upon Plaintiff, EDWARD C. MILLER, to show cause, if any there be, why the Preliminary Objections should not be granted.

Rule returnable on the 16 day of July, 2004, at 10:00 AM/~~PM~~, in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:


J. K. Kumerow

FILED

Page 7 of 9

JUN 23 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

EDWARD C. MILLER, :
Plaintiff :
v. : No. 2004-451 C.D.
: :
BEARD OIL COMPANY; BEARD OIL :
COMPANY, INC.; J.V. INC., d/b/a :
BEARD OIL; J.V. INC., d/b/a SHANER :
ENERGY; SHANER ENERGY, INC.; :
and SHANER OPERATING CORP., :
t/d/b/a SHANER HOTEL GROUP, :
Defendants :
: :
:

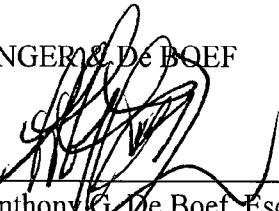
NOTICE

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

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

Court Administrator's Office
Centre County Courthouse
Bellefonte, PA 16823
(814) 355-6727

MITINGER & DE BOEF

By: 

Anthony G. De Boef, Esquire
Attorney For Defendants
I.D. # 71532
2147 East College Avenue
State College, PA 16801
(814) 231-4050

FILED

JUN 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

Dated: 6/18/04

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

EDWARD C. MILLER,	:
	:
Plaintiff	:
	:
v.	:
	No. 2004-451 C.D.
	:
BEARD OIL COMPANY; BEARD OIL	:
COMPANY, INC.; J.V. INC., d/b/a	:
BEARD OIL; J.V. INC., d/b/a SHANER	:
ENERGY; SHANER ENERGY, INC.;	:
and SHANER OPERATING CORP.,	:
t/d/b/a SHANER HOTEL GROUP,	:
Defendants	:
	:

PRELIMINARY OBJECTIONS TO PLAINTIFF EDWARD C.
MILLER'S COMPLAINT

AND NOW comes Defendants Beard Oil Company; Beard Oil Company, Inc.; J.V. Inc. d/b/a Beard Oil; J.V. Inc., d/b/a Shaner Energy; Shaner Energy, Inc.; and Shaner Operating Corp., t/d/b/a Shaner Hotel Group and file the instant preliminary objections to Plaintiff Edward C. Miller's Complaint:

1. Plaintiff commenced the instant matter by the filing of a Complaint on or about May 25, 2004.
2. Plaintiff's Complaint asserts the following Counts: Count I - Claim for an Accounting at Law for All Rents Due Under the Lease Dated October 1, 1981, between Edward C. Miller and Beard Oil Company, Inc.; Count II - Claim for an Accounting at Law for All Rents Due Under the Lease Dated July 24, 1987, between Edward C. Miller and Beard Oil Company; and Count III - Claim for an

Accounting at Law for All Rents Due Under the Lease Dated December 31, 1992,
between Edward C. Miller and J.V., Inc., d/b/a Beard Oil and for Other Damages.

3. Pennsylvania Rule of Civil Procedure 1028 provides that “[p]reliminary objections may be filed by any party to any pleading. . . .” Pa.R.C.P. 1028.

Defendants' Preliminary Objection in the Nature of a Motion to Strike Attorney's Fees and Costs in Counts I, II and III of Plaintiff's Complaint

4. Defendants incorporate herein by reference the averments contained in Paragraphs 1 through 3 inclusive of these preliminary objections if the same were set forth at length herein.
5. Defendants' first preliminary objection is filed pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2) on the basis of failure of a pleading to conform to law or rule of court.
6. In Counts I, II & III, Plaintiff has requested this Honorable Court award attorney's commission of 5% and costs on the collection of real estate taxes, gallonage delivered to the premises and on all amounts owed Plaintiff, including interest.
See Plaintiff's Complaint ¶23(a) and (d), ¶36(a) and (d), and p. 15, ¶(a), (c), and (d).
7. “It is well established that a litigant is responsible for his own counsel fees absent an agreement by the parties or some other established exception.” Koffman v. Smith, 453 Pa.Super. 15, 682 A.2d 1282, 1292 (1996) (citations omitted).
8. Plaintiff's Exhibits “A”, “B” and “C” provide that “[i]n the event the Lessee shall

be in default of any payment of rent herein provided, the Lessor may thereupon give to the said Lessee ten (10) days written notice of such default and at the expiration of said time the Lessee, if the amount of rental still remains unpaid, does authorize any attorney of record in the State of Pennsylvania to appear for it and confess judgment against it for said amount of rental unpaid and interest, with five (5%) percent attorney's commission and with costs for collection of same. . . ."

Plaintiff's Complaint, Exhibit "A" ¶14, Exhibit "B" ¶14, and Exhibit "C" ¶14.

9. Plaintiff fails in Count I, II or III to aver that Plaintiff, at any time, gave any of the Defendants ten (10) days written notice of any such default so as to entitle Plaintiff to collect attorney's commission of five (5%) percent plus costs.

See Plaintiff's Complaint.

10. Inasmuch, as there is no express agreement in effect between the parties in effect, Plaintiff is not entitled to attorney's commissions in the amount of five (5%) percent and/or costs.
11. Alternatively, pursuant to the terms of Plaintiff's Exhibits, Plaintiff is only entitled to the collection of attorney's commission in the amount of five (5%) percent and costs on rent, not real estate taxes or excess gallonage. *See Plaintiff's Exhibits "A" ¶14, Exhibit "B" ¶14, and Exhibit "C" ¶14.*

Wherefore, Defendants respectfully request this Honorable Court sustain their preliminary objection and strike Plaintiff's request for attorney's commission in the amount of five (5%) percent and costs in Counts I, II and III of Plaintiff's Complaint.

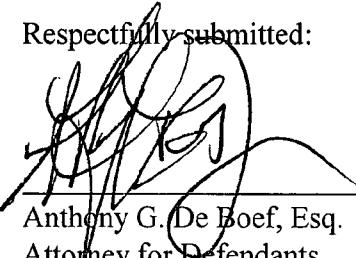
Defendants' Preliminary Objection in the Nature of Legal Insufficiency (demurrer) and
misjoinder of a party as to Defendants Shaner Energy, Inc. and Shaner Operating Corp.
t/d/b/a Shaner Hotel Group

12. Defendants incorporate herein by reference the averments contained in Paragraphs 1 through 11 inclusive of these preliminary objections as if the same were set forth herein.
13. Defendants' second preliminary objection, in the nature of a demurrer, and misjoinder of a party is filed pursuant to Pennsylvania Rules of Civil Procedure 1028(a)(4) and 2232, respectively.
14. Defendants request the dismissal of Plaintiff's Complaint against Defendants Shaner Energy, Inc. and Shaner Operating Corp. t/d/b/a Shaner Hotel Group on the basis neither defendant was nor is a party to any contract and/or lease.
15. A review of the Exhibits attached to Plaintiff's Complaint reveals that Shaner Energy, Inc., and Shaner Operating Corp. t/d/b/a Shaner Hotel Group were never a party to any alleged lease, and, therefore, lack the capacity to be sued.
16. "Misjoined parties are parties who have been improperly joined because their joinder is neither required nor permitted under the joinder rules." Standard Pennsylvania Practice 2d §14:238.
17. "After notice to all other parties, a party may be dropped by order of the court whenever the party has been misjoined. . ." Pa.R.C.P. 2232(b).

Wherefore, Defendants respectfully request this Honorable Court sustain their preliminary objection and dismiss Plaintiff's Complaint against Defendants Shaner Energy, Inc., and Shaner Operating Corp. t/d/b/a Shaner hotel Group.

Respectfully submitted:

By:


Anthony G. De Boef, Esq.
Attorney for Defendants
Attorney ID No. 71532
MITINGER & DE BOEF
2147 East College Avenue
State College, PA 16801
(814)-231-4052

Dated: 6/18/04

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

EDWARD C. MILLER, :
Plaintiff :
v. : No. 2004-451 C.D.
BEARD OIL COMPANY; BEARD OIL :
COMPANY, INC.; J.V. INC., d/b/a :
BEARD OIL; J.V. INC., d/b/a SHANER :
ENERGY; SHANER ENERGY, INC.; :
and SHANER OPERATING CORP., :
t/d/b/a SHANER HOTEL GROUP, :
Defendants :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Preliminary Objections upon Toni M. Cherry, Esq., counsel for Plaintiff by mailing the same via United States First Class Mail, postage prepaid, by depositing the same in the United States Mail, addressed as follows:

TONI M. CHERRY ESQ.
Gleason, Cherry and Cherry
P.O. Box 505
DuBois, PA 15801-0505

MITTINGER & De BOEF

By:

Anthony G. De Boef, Esq.
2147 E. College Avenue
State College, PA 16801
(814)-231-4052

Dated: 6/18/01

FILED
MAY 11 2004
JUN 2 1 2004
cc: Amy DeBoef
William A. Shaw
Prothonotary/Clerk of Courts

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

EDWARD C. MILLER

vs.

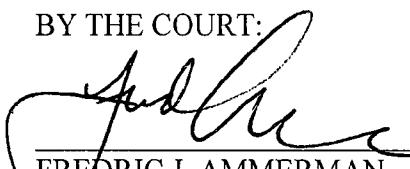
: No. 04-451-CD

BEARD OIL COMPANY; BEARD
OIL COMPANY, INC.; J.V. INC., d/b/a
BEARD OIL; J.V. INC. d/b/a SHANER
ENERGY; SHANER ENERGY, INC.;
and SHANER OPERATING CORP.,
t/d/b/a SAHNER HOTEL GROUP

ORDER

AND NOW, this 9 day of July, 2004, it is the ORDER of the
Court that argument on Defendants' Preliminary Objections in the above-captioned
matter has been rescheduled from July 16, 2004 to Thursday, July 29, 2004 at 2:30
P.M., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED

Red
JUL 12 2004
07/12/04 (JAS)
William A. Shaw
Prothonotary
ACENT TO CLEARY &
DE BOEF

FILED

JUL 12 2004

William A. Shaw
Prothonotary

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WILLIAM A. SHAW
PROTHONOTARY

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

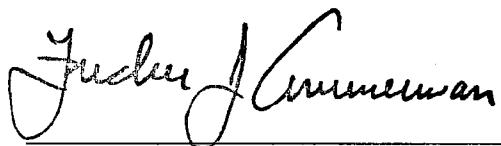
EDWARD C. MILLER,	:
Plaintiff	:
v.	:
	No. 2004-00451-CD
BEARD OIL COMPANY; BEARD OIL	:
COMPANY, INC.; J.V. INC., d/b/a	:
BEARD OIL; J.V. INC., d/b/a SHANER	:
ENERGY; SHANER ENERGY, INC.; and	:
SHANER OPERATING CORP. t/d/b/a	:
SHANER HOTEL GROUP,	:
Defendants	:
	:

ORDER

AND NOW, this 15th day of July, 2004, it is hereby ORDERED and
DECREED that Defendants shall submit a Brief in Support of Preliminary Objections to
Plaintiff's Complaint no later than fourteen (14) days from the date of this Order.

IT IS FURTHER ORDERED that Plaintiff shall have ten (10) days therefrom to submit a
Brief in Response to Defendant's Preliminary Objections.

BY THE COURT:



J.

FILED

JUL 16 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

EDWARD C. MILLER,
Plaintiff

*

*

*

vs.

*

No. 2004-451-C.D.

*

BEARD OIL COMPANY; BEARD OIL
COMPANY, INC.; J.V., INC.,
d/b/a BEARD OIL; J.V., INC.,
d/b/a SHANER ENERGY; SHANER
ENERGY, INC.; and SHANER
OPERATING CORP., t/d/b/a
SHANER HOTEL GROUP,
Defendants

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FILED

AUG 24 2004

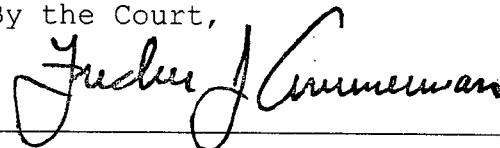
William A. Shaw
Prothonotary/Clerk of Courts

O R D E R

NOW, this 23rd day of August, 2004, in consideration of Defendant's Preliminary Objections, it is the ORDER of this Court as follows:

1. Relative the first Preliminary Objection, the Court being satisfied that the clear language of Paragraph 14 of the Agreement entered into between the parties (Exhibit 'A' to Plaintiff's Complaint) provides for payment of attorneys fees and costs in unpaid rental only, the said Preliminary Objection is granted. Plaintiff's request for attorney's fees and costs on alleged unpaid water, gas, electric or real estate taxes is dismissed.
2. Defendant's second Preliminary Objection requesting that Defendants Shaner Energy, Inc. and Shaner Operating Corp., t/d/b/a Shaner Hotel Group be removed from the case is hereby dismissed.

By the Court,



FREDRIC J. AMMERMAN
President Judge

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

EDWARD C. MILLER,
Plaintiff

V.

BEARD OIL COMPANY; BEARD OIL COMPANY, INC.; J.V. INC., d/b/a BEARD OIL; J.V. INC., d/b/a SHANER ENERGY; SHANER ENERGY, INC.; and SHANER OPERATING CORP. t/d/b/a SHANER HOTEL GROUP,

Defendants

No. 2004-00451-CD

OCT 04 2004

W 1 11:351 W
William A. Shaw
Prothonotary
2 cent to Army

NOTICE

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

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

Court Administrator's Office
Clearfield County Courthouse
Clearfield, PA 16830
(814) 355-6727

MITINGER & De BOEF

By:

Anthony G. De Boef, Esquire

Dated: 10/10/07

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

EDWARD C. MILLER,	:
Plaintiff	:
	:
v.	:
	No. 2004-00451-CD
	:
BEARD OIL COMPANY; BEARD OIL	:
COMPANY, INC.; J.V. INC., d/b/a	:
BEARD OIL; J.V. INC., d/b/a SHANER	:
ENERGY; SHANER ENERGY, INC.; and	:
SHANER OPERATING CORP. t/d/b/a	:
SHANER HOTEL GROUP,	:
Defendants	:
	JURY TRIAL DEMANDED
	:

DEFENDANTS' ANSWER TO PLAINTIFF EDWARD C.
MILLER'S COMPLAINT

AND NOW, comes Defendants Beard Oil Company; Beard Oil Company, Inc.; J.V. Inc., d/b/a Beard Oil; J.V. Inc., d/b/a Shaner Energy; Shaner Energy, Inc.; and Shaner Operating Corp., t/d/b/a Shaner Hotel Group, by and through their attorney, Anthony G. De Boef, of Mitinger and De Boef, and file the following Answer to Plaintiff's Complaint:

1. Denied. To the extent that the allegations of paragraph 1 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial if the same be material.
2. Admitted.

3. Admitted in part and denied in part. Paragraph 3 is denied to the extent that Beard Oil Company merged with J.V., Inc., on April 30, 1991, and Beard Oil Company is no longer authorized to conduct business in the Commonwealth of Pennsylvania.
4. Denied in part, admitted in part. It is admitted that Beard Oil Company, Inc. merged with J.V. Inc. on April 30, 1991. Paragraph 3 is denied to the extent that J.V., Inc. currently performs no business and is presently in a state of dissolution.
5. Admitted in part, denied in part. It is denied that J.V., Inc., t/d/b/a Shaner Energy, Inc.. It is admitted that J.V., Inc., d/b/a Shaner Energy.
6. Admitted.
7. Admitted.
8. Denied in part and admitted in part.. Paragraph 8 is denied to the extent that Beard Oil Company merged and is no longer authorized to conduct business in the Commonwealth of Pennsylvania and J.V., Inc., currently performs no business and is presently in a state of dissolution. It is admitted that J.V., Inc., did have a d/b/a of Shaner Energy.
9. Denied. Paragraph 9 is denied to the extent that Shaner Operating Corp. is the general partner of Shaner Hotel Group Limited Partnership and is a completely separate and independent entity.
10. Denied. To the extent that the allegations of paragraph 10 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or

information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial if the same be material.

Count I

Claim for an Accounting at Law for All Rents Due under the Lease Dated October 1, 1981, between Edward C. Miller and Beard Oil Company, Inc.

11. Defendants incorporate herein by reference the averments contained in paragraph 1 through 10 inclusive of this Answer with New Matter as fully as though the same were set forth herein at length.
12. Admitted.
13. Denied. Paragraph 13 is denied to the extent that the Lease Document speaks for itself.
14. Admitted in part, denied in part. It is admitted that Defendants made monthly payments to Plaintiff. To the extent that the remaining allegations of paragraph 14 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial.
15. Denied. To the extent that allegations of paragraph 15 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these

allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial. To the extent that the allegations of paragraph 15 contain conclusions of law, no response is required.

16. Denied. To the extent that allegations of paragraph 16 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial. To the extent that the allegations of paragraph 16 contain conclusions of law, no response is required.
17. Denied. To the extent that allegations of paragraph 17 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial. To the extent that the allegations of paragraph 17 contain conclusions of law, no response is required.
18. Denied. To the extent that allegations of paragraph 18 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial. To the extent that the allegations of paragraph 18 contain conclusions of law, no response is required.
19. Denied. The Lease Document speaks for itself. To the extent that the remaining

allegations of paragraph 19 constitute allegations of law, no response is required.

20. Admitted in part, denied in part. It is admitted that Defendants did not pay real estate taxes on the premises. To the extent that the remaining allegations of paragraph 20 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial. To the extent that the allegations of paragraph 20 contain conclusions of law, no response is required.
21. Denied. To the extent that allegations of paragraph 21 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial.
22. Denied. The Lease Document speaks for itself. To the extent that the remaining allegations of paragraph 22 constitute conclusions of law, no response is required.
23. Admitted in part. Paragraph 23 is admitted to the extent that Defendants are not aware that any Judgment has been entered on the Lease in question.

Count II

Claim for an Accounting at Law for All Rents Due Under the Lease Dated July 24, 1997, between Edward C. Miller and Beard Oil Company

24. Defendants incorporate by reference paragraphs 1 through 23 inclusive of this

Answer with New Matter as fully as though the same were herein set forth at length.

25. Admitted.
26. Admitted.
27. Admitted in part, denied in part. It is admitted that Defendants made monthly payments to Plaintiff. To the extent that the remaining allegations of paragraph 27 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial.
28. Denied. To the extent that allegations of paragraph 28 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial. To the extent that the allegations of paragraph 28 contain conclusions of law, no response is required.
29. Denied. To the extent that allegations of paragraph 29 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial. To the extent that the allegations of paragraph 29 contain conclusions of law, no response is required.

30. Denied. To the extent that allegations of paragraph 30 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial. To the extent that the allegations of paragraph 30 contain conclusions of law, no response is required.
31. Denied. To the extent that allegations of paragraph 31 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial.
32. Denied. The Lease Document speaks for itself.
33. Admitted in part, denied in part. It is admitted that Defendants did not pay real estate taxes on the leased premises. To the extent that allegations of paragraph 33 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial. To the extent that the allegations of paragraph 33 contain conclusions of law, no response is required.
34. Denied. To the extent that allegations of paragraph 34 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these

allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial.

35. Denied. The Lease Document speaks for itself. To the extent that the remaining allegations of paragraph 35 constitute conclusions of law, no response is required.
36. Admitted in part. Paragraph 36 is admitted to the extent that Defendants are not aware that any Judgment has been entered on the Lease in question.

Count III

Claim for an Accounting at Law for All Rents Due Under the Lease Dated December 31, 1992, between Edward C. Miller and J.V., Inc., d/b/a Beard Oil and Other Damages

37. Defendants incorporate herein by reference the averments contained in paragraph 1 through 36 inclusive of this Answer and New Matter as fully as though the same were herein set forth at length.
38. Admitted.
39. Denied. Paragraph 39 is denied to the extent that the Lease Document speaks for itself.
40. Denied. To the extent that allegations of paragraph 40 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial.
41. Admitted in part, denied in part. It is admitted that Defendants made monthly

payments to Plaintiff. To the extent that the remaining allegations of paragraph 41 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial.

42. Denied. To the extent that allegations of paragraph 42 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial.
43. Denied. To the extent that allegations of paragraph 43 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial. To the extent that the allegations of paragraph 43 contain conclusions of law, no response is required.
44. Denied. To the extent that allegations of paragraph 44 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial. To the extent that the allegations of paragraph 44 contain conclusions of law, no response is required.

45. Denied. To the extent that allegations of paragraph 45 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial.
46. Denied. The Lease Document speaks for itself. To the extent that the remaining allegations of paragraph 46 constitute allegations of law, no response is required.
47. Admitted in part, denied in part. It is admitted that Defendants did not pay real estate taxes on the leased premises. To the extent that allegations of of paragraph 47 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial. To the extent that the allegations of paragraph 47 contain conclusions of law, no response is required.
48. Denied. To the extent that allegations of paragraph 48 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial.
49. Denied. The Lease Document speaks for itself. To the extent that the remaining allegations of paragraph 49 constitute conclusions of law, no response is required.
50. Admitted in part. Paragraph 50 is admitted to the extent that Defendants are not

aware that any Judgment has been entered on the Lease in question.

51. Admitted in part and denied in part. It is admitted that Defendant J.V., Inc., took possession of the leased premises on December 31, 1992. It is denied possession continued until August 21, 1998. To the extent that the remaining allegations of paragraph 51 constitute allegations of act, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial if the same be material.
52. Denied. The last rental check Defendants made to Plaintiff occurred in October of 1997. To the extent that allegations of paragraph 52 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial. To the extent that the allegations of paragraph 52 contain conclusions of law, no response is required.
53. Denied. To the extent that allegations of paragraph 53 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial.
54. Denied. To the extent that the allegations of paragraph 54 constitute conclusions of law, no response is required.

55. Denied. To the extent that the allegations paragraph 55 constitute conclusions of law, no response is required.
56. Denied. To the extent that the allegations of paragraph 56 constitute conclusions of law, no response is required.
57. Denied. The Lease Document speaks for itself. To the extent that the remaining allegations of paragraph 57 constitute conclusions of law, no response is required.
58. Denied. To the extent that allegations of paragraph 58 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial. To the extent that the allegations of paragraph 58 contain conclusions of law, no response is required.
59. Denied. To the extent that allegations of paragraph 59 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial if the same be material.
60. Denied. To the extent that allegations of paragraph 60 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial if the same be material.

61. Denied. Defendants deny the allegations of paragraph 61. Strict proof will be demanded at the time of trial if the same be material.
62. Denied. To the extent that allegations of paragraph 62 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial if the same be material.
63. Denied. Defendants deny the allegations of paragraph 63. Strict proof is demanded at the time of trial.. To the contrary, pursuant to a Limited Site Characterization Report dated August 14, 1997, a copy of which is attached hereto and made a part hereof as Exhibit "A", there as "[n]o evidence of widespread soil or groundwater contamination. . . ." To the extent that the remaining allegations of paragraph 63 contain conclusions of law, no response is required.
64. Admitted in part and denied in part. Defendants admit Defendants have refused payment of any monies, however, Defendants deny owing Plaintiffs any monies. To the extent that the remaining allegations of paragraph 24 constitute conclusions of law, no response is required.

New Matter

65. Defendants incorporate herein by reference the averments contained in paragraphs 1 through 64 inclusive of this Answer with New Matter as fully as though the same were herein set forth at length.

66. At no point in time during the lease term, did Plaintiff ever request an accounting of gallonage, the payment of additional rent or the payment of real estate taxes.
67. By accepting the monthly rent payments and never requesting any additional amounts, Plaintiff has waived the right to claim for additional rent and/or payments.
68. The four underground tanks located on the leased premises were required to be upgraded pursuant to the December 22, 1998 upgrade requirements of the Pennsylvania Department of Environmental Protection - Division of Storage Tanks.
69. As a result of the December 12, 1998 upgrade requirements, Defendants were unable to obtain a license or permit as required by law.
70. Pursuant to paragraph 11 of the Lease, as Defendants were unable to obtain a license or permit as required by law, Defendants had the right to terminate the Lease on 30 days notice to Plaintiff.
71. Pursuant to paragraph 17 of the Lease, “[l]essor shall and will save, indemnify and keep harmless the lessee of any kind and prosecutions of every kind and characters arising in law or in equity as a consequence of this Lease.”
72. As set forth in paragraph 17, Defendants are excused from any and all suits arising in law or equity as result of the lease.
73. Defendant Beard Oil terminated the lease on or about September 12, 1997.
74. As a result of the September 12, 1997 lease termination, Defendants were not permitted egress or ingress on the leased premises.

75. Plaintiff, after taking possession of the property, barred the Defendants from egress or ingress on the premises by blocking the entryways with ropes and chains.
76. After taking possession, Plaintiff renovated the building and leased the premises to a new tenant.
77. In the alternative, Plaintiff, by taking possession of the property and through his aforementioned actions, effectively terminated the lease and is barred from asserting any claim for lost rent thereafter.
78. Pursuant to paragraph 3 of the Lease, upon termination of the lease, all of the right and interest in the improvements permanently attached to the ground or buried underground revert to and are owned by Lessor.
79. Pursuant to paragraph 10 of the Lease, any and all of the property located on the premises, upon termination of the lease, became a part of the real estate.
80. Inasmuch, as Plaintiff was given consideration in the event of a termination, Plaintiff is not entitled to future rent.
81. Inasmuch, as Plaintiff is the owner of the underground tanks and the underground tanks became a part of the real estate, Defendants bear no responsibility for any and all costs and liabilities arising thereafter.
82. Defendant Shaner Energy, Inc., and Shaner Operating Corp., as evidenced by the lease attached to Plaintiff's Complaint as Exhibit "A", are not parties to the lease.
83. Defendant Shaner Energy, Inc., and Shaner Operating Corp. are not proper parties to the instant action and should be dismissed.

84. Plaintiff's Complaint does not set forth a valid cause of action against Defendants under the facts and circumstances set forth herein.
85. The instant matter, filed by Plaintiff Edward C. Miller and docketed at Clearfield County Court Civil Number 2004-451 C.D. is barred by the applicable statute of limitations and the applicable Pennsylvania Rules of Civil Procedure.
86. Plaintiff's claims for real estate taxes and additional rent based on excess gallonage are barred under the affirmative defense of estoppel.

WEHEREFORE, Defendants respectfully request this Honorable Court dismiss Plaintiff's Complaint with prejudice, and award Defendants costs and attorney's fees incurred in the defense of this action, and such other relief as this Honorable Court deems appropriate, and against Plaintiff Edward C. Miller.

Counterclaim

AND NOW, comes Defendants Beard Oil Company; Beard Oil Company, Inc.; J.V. Inc., d/b/a Beard Oil; J.V. Inc., d/b/a Shaner Energy; Shaner Energy, Inc.; and Shaner Operating Corp., t/d/b/a Shaner Hotel Group, by and through their attorney, Anthony G. De Boef, of Mitinger and De Boef, and file the following Counterclaim upon causes of action whereof the following are statements:

1. Defendants incorporate by reference paragraphs 1 through 86 inclusive of this Answer with New Matter as fully as though the same were set forth at length.
2. In the alternative, Plaintiff breached the lease by assuming control of the

underground tanks and prohibiting Defendants access to the premises in question.

3. Defendants are entitled to compensation for lost profits and the value of the underground storage tanks.

WHEREFORE, Defendants respectfully request this Honorable Court enter Judgment in their favor on Defendants' Counterclaim in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00), together with costs and attorney's fees incurred in the defense of this action, and such other relief as this Honorable Court deems appropriate, and against Plaintiff Edward C. Miller.

Respectfully submitted,
MITINGER & DE BOEF

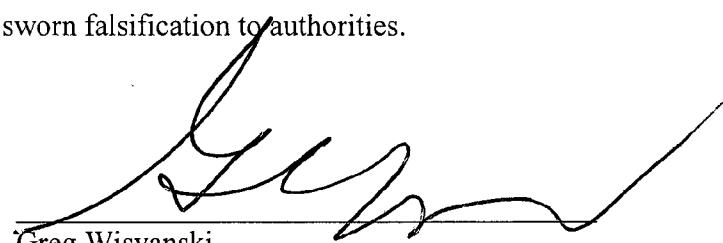
By:


Anthony G. De Boef, Esq.
Attorney for Defendants
I.D. No.: 71532
2147 East College Avenue
State College, PA 16801
(814)-231-4052

Dated: 10/1/09

VERIFICATION

The undersigned verifies that the facts contained herein are true and correct. The undersigned understands that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904 relating to sworn falsification to authorities.



Greg Wisyanski
President

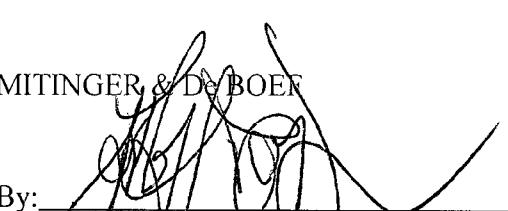
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL ACTION

EDWARD C. MILLER,	:
Plaintiff	:
	:
v.	:
	No. 2004-00451-CD
	:
BEARD OIL COMPANY; BEARD OIL	:
COMPANY, INC.; J.V. INC., d/b/a	:
BEARD OIL; J.V. INC., d/b/a SHANER	:
ENERGY; SHANER ENERGY, INC.; and	:
SHANER OPERATING CORP. t/d/b/a	:
SHANER HOTEL GROUP,	:
Defendants	:
	JURY TRIAL DEMANDED
	:

CERTIFICATE OF SERVICE

I hereby certify that a copy of Defendant's Answer to Plaintiff Edward C. Miller's
Complaint was served upon counsel of record by United States Mail, First Class, postage
prepaid, addressed as follows:

TONI M. CHERRY ESQ.
Gleason, Cherry and Cherry
P.O. Box 505
DuBois, PA 15801-0505

MITINGER & DE BOEF
By: 
Anthony G. De Boef, Esquire
Attorney for Defendants

Dated: 10/1/04

FILED

OCT 04 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,

Plaintiff

vs.

BEARD OIL COMPANY; BEARD OIL
COMPANY, INC.; J.V. INC., d/b/a
BEARD OIL; J.V. INC., d/b/a SHANER
ENERGY; SHANER ENERGY, INC.; and
SHANER OPERATING CORP. t/d/b/a
SHANER HOTEL GROUP,

Defendants

: No. 2004 - 00451 C.D.

:

: Type of Case:

:

: Type of Pleading: REPLY TO NEW

: MATTER, REPLY TO COUNTERCLAIM

: AND NEW MATTER TO COUNTERCLAIM

:

: Filed on Behalf of : EDWARD C. MILLER,

: Plaintiff

:

: Counsel of Record for this Party:

: TONI M. CHERRY, ESQ.

: Supreme Court No.: 30205

:

: GLEASON, CHERRY AND

: CHERRY, L.L.P.

: Attorneys at Law

: P. O. Box 505

: One North Franklin Street

: DuBois, PA 15801

:

: (814) 371-5800

FILED acc

09/03/05 Atty T. Cherry
SEP 26 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER, :
Plaintiff :
:
vs. :
: No. 2004 - 00451 C.D.
BEARD OIL COMPANY; BEARD OIL :
COMPANY, INC.; J.V. INC., d/b/a :
BEARD OIL; J.V. INC., d/b/a SHANER :
ENERGY; SHANER ENERGY, INC.; and :
SHANER OPERATING CORP. t/d/b/a :
SHANER HOTEL GROUP, :
Defendants :
:

NOTICE TO PLEAD

To The Within Defendants:

YOU ARE HEREBY NOTIFIED TO PLEAD
TO THE WITHIN NEW MATTER TO
COUNTERCLAIM WITHIN TWENTY (20)
DAYS FROM THE DATE OF SERVICE
HEREOF.

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER, :
Plaintiff :
:
vs. :
: No. 2004 - 00451 C.D.
BEARD OIL COMPANY; BEARD OIL :
COMPANY, INC.; J.V. INC., d/b/a :
BEARD OIL; J.V. INC., d/b/a SHANER :
ENERGY; SHANER ENERGY, INC.; and :
SHANER OPERATING CORP. t/d/b/a :
SHANER HOTEL GROUP, :
Defendants :

REPLY TO NEW MATTER

AND NOW, comes the Plaintiff, EDWARD C. MILLER, by and through his attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and replies to the New Matter asserted by Defendants as follows:

65. Insofar as Defendants have incorporated herein by reference the averments set forth in Paragraphs 1 through 64 inclusive of their Answer to Plaintiff's Complaint, Plaintiff does reassert and reallege Paragraphs 1 through 64 inclusive of his Complaint in response thereto.

66. DENIED as stated. The agreements executed between the parties provide for rent to be paid as a percent of gallonage with a guarantee of a minimum monthly payment, together with the payment of real estate taxes. The agreements signed by the parties present the demand for proper payment. Moreover, by way of further answer, it was not until Defendants vacated

the premises and refused to pay the additional rent due and owing that Plaintiff had cause to believe that Defendants had defaulted in other obligations under the agreements.

67. DENIED as a conclusion of law to which no response is required. This is not a case of accord and satisfaction because Plaintiff made no demand for an amount for which a lesser amount was paid. Plaintiff never waived any right to claim additional rent or payments upon his discovery that the same were due and owing by Defendants.

68. DENIED. Upon investigation it was found that there was only one tank that was leaking and the tank that was leaking was the tank that Defendants installed.

69. DENIED as after reasonable investigation Plaintiff is without sufficient knowledge to attest to the truth or falsity of the averments contained in Paragraph 69 as the same is within the sole knowledge of the Defendants. By way of further answer, it is averred that if Defendants were unable to obtain a license or permit as required by law, such inability was solely the result of the failures and/or wrongdoing and/or negligent conduct of the Defendants and in no way caused by Plaintiff.

70. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Paragraph 11 allows Defendants to terminate the lease during its initial term.

71. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the provisions of Paragraph 7 act to excuse Defendants for failing to pay their obligations under the lease.

72. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendants are excused from their own wrongdoing or

liability under the lease as a result of Paragraph 17. By way of further answer, it is DENIED that Defendants are excused from paying the lawful rent due under the terms of the lease by Paragraph 17.

73. DENIED. Defendant Beard Oil could not terminate the lease on or about September 12, 1997, because by its very terms the lease continued for 10 years from the date of signing.

74. DENIED. At no time did Plaintiff block Defendants from coming onto the property. Defendants retained a key to the premises and had every ability to enter thereon after September 12, 1997.

75. DENIED. On the contrary, at no time did Plaintiff bar the Defendants from egress or ingress. Plaintiff attempted to safeguard his property by putting a chain across that would prevent large tractor trailer trucks from entering upon the property and turning around therein and breaking the concrete. However, Defendants retained a key and had every opportunity to enter onto the premises.

76. DENIED. Plaintiff never renovated the building nor did he lease the premises prior to the time set forth in the Complaint. Plaintiff had to make repairs to the building because of the destruction thereof caused by Defendants.

77. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Plaintiff terminated the lease and is barred from asserting any claim for lost rent. On the contrary, Plaintiff took appropriate steps to maintain and repair property that had been left in a dismal condition when Defendants abandoned the same and refused to return and/or to honor their lease with Plaintiff.

78. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the lease was terminated on the date that Defendants vacated the premises.

79. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Plaintiff was obligated to pay for damages caused by Defendants.

80. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Plaintiff was given any consideration by Defendants. It is further DENIED that Plaintiff is somehow not entitled to all rents due for the full term of the lease.

81. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Plaintiff became the owner of the underground tanks when Defendants abandoned the premises prior to the end of their lease term. Defendants installed the tank that leaked and otherwise engaged in activity which caused the tanks to constantly overflow and such overflow caused by the negligent action of Defendants seeped into the surrounding ground requiring the removal of the tanks. Defendants are liable over to Plaintiff for all costs he incurred as a result of the negligent, wanton and/or wrongful behavior of Defendants.

82. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant, Shaner Energy, Inc., and Shaner Operating Corp., are not parties to the lease. Defendant, Shaner Energy, Inc., and Shaner Operating

Corp., are parties to the lease attached to Plaintiff's Complaint as Exhibit "A" for the reasons set forth in the Complaint.

83. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant, Shaner Energy Inc., and Shaner Operating Corp., are not proper parties to the instant action and should be dismissed. On the contrary, Defendant, Shaner Energy, Inc., and Shaner Operating Corp., by their own admission, are successors in interest and assumed all of the rights, duties and obligations of the other Defendants in this case and, as such, are proper parties to the instant action.

84. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Plaintiff's Complaint does not set forth a valid cause of action. On the contrary, the averments contained in Paragraphs 1 through 64 inclusive of Plaintiff's Complaint are reasserted and realleged herein as if the same were set forth at length herein.

85. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is alleged that the documents signed by Plaintiff and Defendant are documents under seal subject to a 20-year statute of limitations.

86 DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the defense of estoppel acts in any way to bar Plaintiff's claims for the payment of real estate taxes and additional rent based on excess gallonage as the same are rights upon which all parties agreed but which Defendants wholly failed to pay.

WHEREFORE, Plaintiff respectfully requests that Defendants' New Matter be dismissed and that judgment be entered in favor of Plaintiff and against Defendants, together with attorney's fees, interest thereon and costs of suit.

REPLY TO COUNTERCLAIM

AND NOW, comes the Plaintiff, EDWARD C. MILLER, by and through his attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and replies to Defendants' Counterclaim as follows:

1. Plaintiff incorporates herein by reference the averments contained in Paragraphs 1 through 86 inclusive of the foregoing Reply to New Matter as fully as though the same had been set forth at length herein.
2. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Plaintiff breached the lease at any time. Plaintiff did not take control of the underground tanks and never prohibited Defendants access to the premises in question. On the contrary, Plaintiff was forced to remedy damages caused by the actions of the Defendants and was forced to expend monies to remove a leaking tank that had been installed by Defendants. Moreover, Plaintiff was forced to expend monies to satisfy the requirements of the Department of Environmental Protection which requirements should have been met by Defendants.
3. DENIED. Defendants are not entitled to compensation for lost profits nor are they entitled to recover from Plaintiff the value of the underground storage tanks. On the contrary, Defendants abandoned the tanks and the lease and breached their contract with Plaintiff. Any

profits that the Defendants lost occurred as a result of the Defendants' own actions in violation of the terms of their lease with Plaintiff. Defendants left tanks they knew or should have known were leaking because Defendants were in possession of said tanks and were solely responsible for the condition of said tanks and caused the situation that Plaintiff was required to pay monies to remedy to the satisfaction of the Department of Environmental Protection.

By way of further answer, it is averred that Defendants' raising of a claim for damages for lost profits and the value of the underground storage tanks when Defendants know that they cannot maintain such an action against Plaintiff under the circumstances of this case is proof that Defendants' conduct is arbitrary, vexatious and/or in bad faith entitling Plaintiff to an award of counsel fees under 42 Pa. C.S.A. §2503(9).

WHEREFORE, Plaintiff respectfully requests that Defendants' Counterclaim be dismissed and that judgment be entered in favor of Plaintiff for an amount of attorney's fees and costs expended in the defense of Defendants' Counterclaim.

NEW MATTER TO COUNTERCLAIM

4. That Defendants have raised a Counterclaim based on facts alleged by Defendants that Defendants know to be false entitling Plaintiff to sanctions under Pa. R.C.P. 1023.1 through 1023.4.

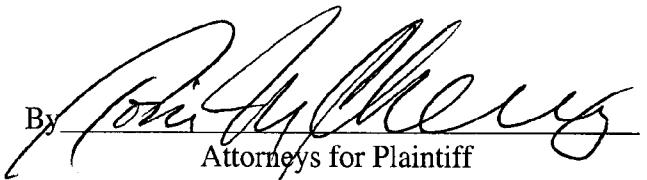
5. That Defendants' actions in asserting a Counterclaim are arbitrary, vexatious or in bad faith, entitling Plaintiff to an award of counsel fees under 42 Pa. C.S.A. §2503(9).

WHEREFORE, Plaintiff demands judgment against Defendants for all amounts due under the leases, together with interest thereon, attorney's fees as provided under the terms of

the leases plus an award of additional attorney's fees as a sanction as allowed by law together with costs of suit.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By 
Attorneys for Plaintiff

VERIFICATION

I, EDWARD C. MILLER, Plaintiff herein, verify that the information provided in the foregoing Reply to New Matter, Reply to Counterclaim and New Matter to Counterclaim is true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



Edward C. Miller

Dated: September 23, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

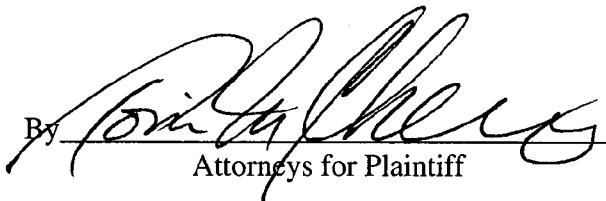
EDWARD C. MILLER, :
Plaintiff :
:
vs. :
: No. 2004 - 00451 C.D.
BEARD OIL COMPANY; BEARD OIL :
COMPANY, INC.; J.V. INC., d/b/a :
BEARD OIL; J.V. INC., d/b/a SHANER :
ENERGY; SHANER ENERGY, INC.; and :
SHANER OPERATING CORP. t/d/b/a :
SHANER HOTEL GROUP, :
Defendants :

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September, 2005, a true and correct copy of Plaintiff's Reply to New Matter, Reply to Counterclaim and New Matter to Counterclaim was served upon ANTHONY G. DeBOEF, ESQ., counsel for Defendants, by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

ANTHONY G. DeBOEF, ESQ.
Mitinger & DeBoef
Attorneys at Law
2147 East College Avenue
State College, PA 16801

GLEASON, CHERRY AND CHERRY, L.L.P.


By Brian J. Miller
Attorneys for Plaintiff

Dated: September 23, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,	:	
	Plaintiff	:
vs.	:	
BEARD OIL COMPANY; BEARD OIL	:	No. 2004 - 00451 C.D.
COMPANY, INC.; J.V. INC., d/b/a	:	
BEARD OIL; J.V. INC., d/b/a SHANER	:	
ENERGY; SHANER ENERGY, INC.; and	:	
SHANER OPERATING CORP. t/d/b/a	:	
SHANER HOTEL GROUP,	:	
	Defendants	:

FILED
m 19:02 26/1
SEP 26 2005
William A. Shaw
Honorary Clerk of Courts
WCC

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September, 2005, Plaintiff's First Request for Production of Documents to Defendants was served upon ANTHONY G. DeBOEF, ESQ., counsel for Defendants, by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

ANTHONY G. DeBOEF, ESQ.
Mitinger & DeBoef
Attorneys at Law
2147 East College Avenue
State College, PA 16801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Atorneys for Plaintiff

Dated: September 23, 2005

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

EDWARD C. MILLER,
Plaintiff

v.

BEARD OIL COMPANY; BEARD OIL
COMPANY, INC.; J.V. INC., d/b/a
BEARD OIL; J.V. INC., d/b/a SHANER
ENERGY; SHANER ENERGY, INC.; and
SHANER OPERATING CORP. t/d/b/a
SHANER HOTEL GROUP,
Defendants

: No. 2004-00451-CD

FILED

02/17/05
NOV 14 2005

4CC Atty
DeBoef
GR

William A. Shaw
Prothonotary

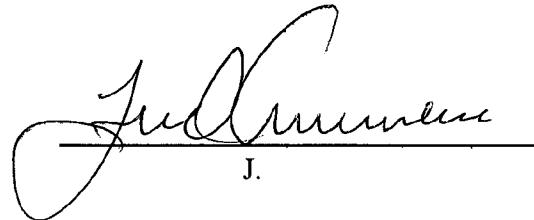
RULE TO SHOW CAUSE

Rule returnable on the 14th day of December, 2005, at 11:30

AM/PM, in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield,

Pennsylvania.

BY THE COURT:


J.

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

EDWARD C. MILLER, :
Plaintiff :
v. : No. 2004-00451-CD
BEARD OIL COMPANY; BEARD OIL :
COMPANY, INC.; J.V. INC., d/b/a :
BEARD OIL; J.V. INC., d/b/a SHANER :
ENERGY; SHANER ENERGY, INC.; and :
SHANER OPERATING CORP. t/d/b/a :
SHANER HOTEL GROUP, :
Defendants :
:

ORDER

AND NOW, this ____ day of ____, 2005, it is hereby **ORDERED** and **DECREED** that
Defendants' Motion to Strike Plaintiff's New Matter to Counterclaim is hereby **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's New Matter to Counterclaim is hereby
STRICKEN.

By the Court: _____
Judge

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

EDWARD C. MILLER,	:	
Plaintiff	:	
	:	
v.	:	No. 2004-00451-CD
	:	
BEARD OIL COMPANY; BEARD OIL	:	
COMPANY, INC.; J.V. INC., d/b/a	:	
BEARD OIL; J.V. INC., d/b/a SHANER	:	
ENERGY; SHANER ENERGY, INC.; and	:	
SHANER OPERATING CORP. t/d/b/a	:	
SHANER HOTEL GROUP,	:	
Defendants	:	JURY TRIAL DEMANDED
	:	

DEFENDANTS' MOTION TO STRIKE
PLAINTIFF'S NEW MATTER TO COUNTERCLAIM

AND NOW, comes Defendants Beard Oil Company; Beard Oil Company, Inc.; J.V. Inc., d/b/a Beard Oil; J.V. Inc., d/b/a Shaner Energy; Shaner Energy, Inc.; and Shaner Operating Corp., t/d/b/a Shaner Hotel Group, by and through their attorney, Anthony G. De Boef, of Mitinger & De Boef, and file the following Motion to Strike Plaintiff's New Matter to Counterclaim:

1. Plaintiff's New Matter to Defendant's Counterclaim is filed pursuant to Pennsylvania Rule of Civil Procedure 1023.1 through 1023.4. *See* Plaintiff's New Matter to Counterclaim, ¶ 4.

2. Pennsylvania Rule of Civil Procedure 1023.2 provides, in pertinent part, that “[a]n application for sanctions under this rule be made by motion, shall be made separately from other applications and shall describe the specific conduct alleged to violate Rule 1023.1(c). Pa.R.C.P. 1023.2(a).
3. Plaintiff’s inclusion of a claim for sanctions in New Matter to Counterclaim is improper and, inasmuch, should be stricken.
4. Additionally, pursuant to the Pennsylvania Rules of Civil Procedure, Plaintiff, prior to pursuing a Motion for Sanctions, is to provide opposing party “notice and a reasonable opportunity to respond.” Pa.R.C.P. 1023.1(4).
5. The Explanatory Comment to Pa.R.C.P. 1023.1 provides, in pertinent part:

The rule provides that requests for sanctions **must** be made as a separate motion, i.e., not simply included as an additional prayer for relief in another motion. The **motion for sanctions cannot be filed until at least 28 days after service of a written notice and demand**, upon the party whose conduct is claimed to violate the rule, that the offending document or portion of the document be withdrawn or appropriately corrected. . . .**counsel should give informal notice to the other party, whether in person or by a telephone call or letter, of a potential violation before proceeding to prepare and serve the written notice and demand.**

Pa.R.C.P. 1023.1, Explanatory Comment, emphasis added.

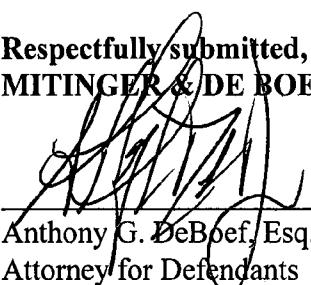
6. Instantly, Plaintiff has failed to meet both the requirements and spirit of the rule by not providing opposing counsel with either informal or the proper formal notice.
7. Inasmuch, Plaintiff’s New Matter to Counterclaim fails to conform to the requirements of the Pennsylvania Rules of Civil Procedure.

8. "The Court in its discretion at any stage of the proceedings may deny a motion for sanctions without hearing or argument." Pa.R.C.P. 1023.1, Note.
9. Defendants respectfully request this Honorable Court grant their Motion to Strike without hearing or argument.

WHEREFORE, Defendants request this Honorable Court to grant their Motion to Strike Plaintiff's New Matter to Counterclaim and award Defendants attorney's fees incurred in the filing of this Motion and any other such relief as this Honorable Court deems appropriate.

Respectfully submitted,
MITINGER & DE BOEF

By:


Anthony G. DeBoef, Esq.
Attorney for Defendants
I.D. No.: 71532
2147 East College Avenue
State College, PA 16801
(814)-231-4052

Dated: 11/7/05

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

EDWARD C. MILLER, :
Plaintiff :
v. : No. 2004-00451-CD
BEARD OIL COMPANY; BEARD OIL :
COMPANY, INC.; J.V. INC., d/b/a :
BEARD OIL; J.V. INC., d/b/a SHANER :
ENERGY; SHANER ENERGY, INC.; and :
SHANER OPERATING CORP. t/d/b/a :
SHANER HOTEL GROUP, :
Defendants :
: JURY TRIAL DEMANDED

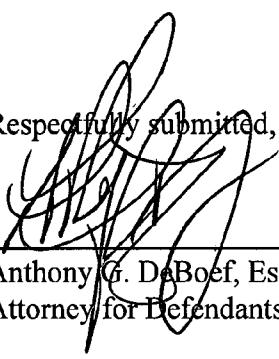
CERTIFICATE OF SERVICE

I hereby certify that a copy of Defendant's Motion to Strike Plaintiff's New Matter to Counterclaim was served upon counsel of record by United States Mail, First Class, postage prepaid, addressed as follows:

TONI M. CHERRY, ESQ.
Gleason, Cherry and Cherry
P.O. Box 505
DuBois, PA 15801-0505

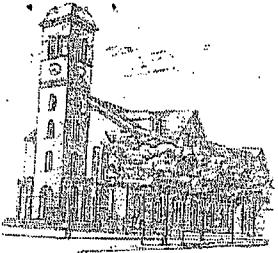
By:

Respectfully submitted,



Anthony G. DeBoef, Esq.
Attorney for Defendants

Dated: 11/2/05



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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

Sincerely,



William A. Shaw
Prothonotary

You are responsible for serving all appropriate parties.

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

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER, : No. 2004 - 00451 C.D.
Plaintiff :
vs. : Type of Case:
BEARD OIL COMPANY; BEARD OIL :
COMPANY, INC.; J.V. INC., d/b/a : Type of Pleading: PRAECIPE TO MARK
BEARD OIL; J.V. INC., d/b/a SHANER : NEW MATTER TO COUNTERCLAIM
ENERGY; SHANER ENERGY, INC.; and : WITHDRAWN
SHANER OPERATING CORP. t/d/b/a :
SHANER HOTEL GROUP, : Filed on Behalf of : EDWARD C. MILLER,
Defendants : Plaintiff :
: Counsel of Record for this Party:
: TONI M. CHERRY, ESQ.
: Supreme Court No.: 30205
: :
: GLEASON, CHERRY AND
: CHERRY, L.L.P.
: Attorneys at Law
: P. O. Box 505
: One North Franklin Street
: DuBois, PA 15801
: :
: (814) 371-5800

FILED *acc*
Mill 07/01/05 *AM*
DEC 08 2005 *T. Cherry*
William A. Shaw
Prothonotary/Clerk of Courts

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

EDWARD C. MILLER, Plaintiff
vs. No. 2004 - 00451 C.D.
BEARD OIL COMPANY; BEARD OIL COMPANY, INC.; J.V. INC., d/b/a BEARD OIL; J.V. INC., d/b/a SHANER ENERGY; SHANER ENERGY, INC.; and SHANER OPERATING CORP. t/d/b/a SHANER HOTEL GROUP, Defendants

**PRAECIPE TO MARK NEW MATTER TO
COUNTERCLAIM WITHDRAWN**

TO WILLIAM A. SHAW, PROTHONOTARY

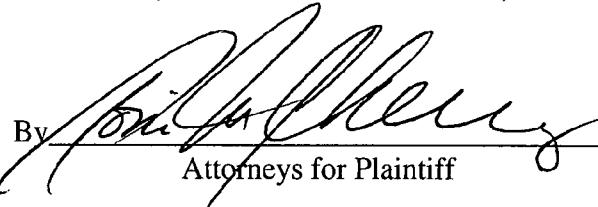
SIR:

Kindly mark the New Matter to Counterclaim attached to Plaintiff's Reply to New Matter and Reply to Counterclaim withdrawn.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By


Attorneys for Plaintiff

Dated: December 7, 2005

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

EDWARD C. MILLER,
Plaintiff

vs.

BEARD OIL COMPANY; BEARD OIL
COMPANY, INC.; J.V. INC., d/b/a
BEARD OIL; J.V. INC., d/b/a SHANER
ENERGY; SHANER ENERGY, INC.;
and SHANER OPERATING CORP.
t/d/b/a SHANER HOTEL GROUP,
Defendants

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NO. 04-451-CD

ORDER

NOW, this 13th day of December, 2005, in light of Plaintiff's Praecipe to
Withdraw New Matter to Counterclaim, it is hereby ORDERED and DECREED that
Defendant" Motion to Strike Plaintiff" New Matter is hereby MOOT.

It is further ORDERED that Defendants' Motion to Strike Plaintiff's New Matter
to Counterclaim is hereby DISMISSED.

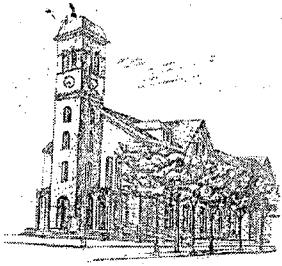
BY THE COURT



FREDRIC J. AMMERMAN
President Judge

FILED 300
01/16/2005 Atty DeBoef
DEC 14 2005

William A. Shaw
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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

Sincerely,

William A. Shaw
Prothonotary

You are responsible for serving all appropriate parties.

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

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

CA

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

EDWARD C. MILLER,	:	
	Plaintiff	:
v.	:	No. 2004-00451-C.D.
	:	
BEARD OIL COMPANY; BEARD OIL	:	
COMPANY, INC.; J.V. INC., d/b/a	:	
BEARD OIL; J.V. INC., d/b/a SHANER ENERGY;	:	
SHANER ENERGY, INC.; and SHANER	:	
OPERATING GROUP CORP. t/d/b/a	:	
SHANER HOTEL GROUP,	:	
	Defendants	:JURY TRIAL DEMANDED
	:	

RULE TO SHOW CAUSE

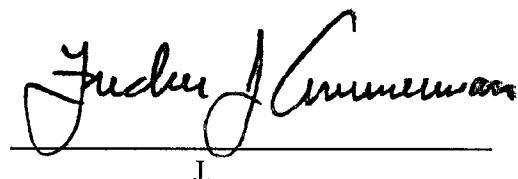
AND NOW, this 20th day of March, 2006, upon consideration of

Defendants' Motion for Judgment on the Pleadings, Plaintiff, EDWARD C. MILLER, and on Motion of Anthony G. De Boef, Attorney for Defendants named above, a Rule is hereby entered upon Plaintiff, EDWARD C. MILLER, to show cause, if any there be, why the relief requested should not be granted.

Rule returnable on the 25th day of April, 2006, at 9:30

AM/PM, in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:



J.

FILED *2cc*
01/23/06 Atty DeBoef
MAR 21 2006 (GP)
GP

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

EDWARD C. MILLER, :
Plaintiff :
v. : No. 2004-00451-C.D.
: :
BEARD OIL COMPANY; BEARD OIL :
COMPANY, INC.; J.V. INC., d/b/a :
BEARD OIL; J.V. INC., d/b/a SHANER ENERGY; :
SHANER ENERGY, INC.; and SHANER :
OPERATING GROUP CORP. t/d/b/a :
SHANER HOTEL GROUP, :
Defendants : JURY TRIAL DEMANDED
: :
: :

FILED
M 10:00 AM
MAR 20 2006
William A. Shaw (6K)
Prothonotary/Clerk of Courts
2cc Anthony DeBoef

*Attorney for Plaintiff: Toni M. Cherry, Esq.
Attorney for Defendants: Anthony G. De Boef, Esq.*

**DEFENDANT'S MOTION FOR JUDGMENT
ON THE PLEADINGS**

AND NOW, comes Defendants Beard Oil Company; Beard Oil Company, Inc.; J.V. Inc.,
d/b/a Beard Oil; J.V. Inc., d/b/a Shaner Energy; Shaner Energy, Inc.; and Shaner Operating
Group Corp., t/d/b/a Shaner Hotel Group, by and through their attorney, Anthony G. De Boef, of
Mitinger and De Boef, and file the following Motion for Judgment on the Pleadings:

1. Plaintiff filed a Complaint in this matter on or about March 22, 2000 (No. 2000-355-C.D.).
2. On or about April 14, 2000, Defendants filed an Answer and New Matter.
3. Plaintiff, in or about April 2003, filed an Amended Complaint.

4. Thereafter, on or about May 1, 2003, Plaintiff filed a Seconded Amended Complaint.
5. Defendants, on or about July 7, 2003, filed an Answer and New Matter to Plaintiff's Seconded Amended Complaint.
6. On the day the non-jury trial was scheduled to begin, March 31, 2004, Plaintiff took a voluntary non-suit at Clearfield County Number 2000-355 C.D.
7. On or about May 25, 2004, Plaintiff filed a Complaint, docketed at 2004-00451-C.D.
8. Defendants, on or about June 21, 2004, filed Preliminary Objections to Plaintiff's Complaint.
9. In an Order dated August 23, 2004, this Honorable Court sustained Defendants' first preliminary objection and dismissed Plaintiff's request for attorney's fees and costs on alleged unpaid water, gas, electric or real estate taxes and overruled Defendant's preliminary objection as to Defendants Shaner Energy, Inc. and Shaner Operating Corp., t/d/b/a Shaner Hotel Group.
10. On or about October 4, 2004, Defendants filed an Answer, New Matter and Counterclaim to Plaintiff's Complaint.
11. Thereafter, on or about September 26, 2005, Plaintiff filed a Reply to New Matter, Reply to Counterclaim and New Matter to Counterclaim.

12. Following Defendants' filing of a Motion to Strike New Matter to Counterclaim, Plaintiff filed a Praecept to Withdraw New Matter to Counterclaim. As a result, this Honorable Court entered an Order dated December 13, 2005, dismissing Defendant's Motion to Strike Plaintiff's New Matter to Counterclaim.
13. The Pennsylvania Rules of Civil Procedure provide that "[a]fter the relevant pleadings, but within such time as to not unreasonably delay the trial, any party may move for judgment on the pleadings." Pa.R.C.P. 1034.
14. A motion for judgment on the pleadings is in the nature of a demurrer in which all of the opposing party's well-pleaded allegations are viewed as true, but only those facts specifically admitted by the opposing party may be considered against him. Felli v. Com., Dept. of Transportation, ___ Pa. Comm. ___, 666 A.2d 775 (1995), *reargument denied*.
15. A motion for judgment on the pleadings should be granted only where the pleadings demonstrate that no genuine issue of fact exists, and the moving party is entitled to judgment as a matter of law. Kelly v. Nationwide Insurance Co., 414 Pa.Super. 6, 606 A.2d 470 (1992).
16. Pursuant to the Pennsylvania Rules of Civil Procedure, a voluntary nonsuit is the "exclusive method of voluntary termination of an action" by the plaintiff. Pa.R.C.P. 230.
17. 42 Pa.C.S.A. § 5535(a)(2)(ii) provides that the statute of limitations is not stayed if the prior action was voluntarily dismissed. Thus, the effect of a voluntary nonsuit is as of the original suit was never filed.

18. Count I of Plaintiff's Complaint asserts a claim for an accounting at law of all rents due under a lease dated October 1, 1981. *See Plaintiff's Complaint, Count I.*
19. Count I of Plaintiff's Complaint is barred by the statute of limitations and should be dismissed with prejudice.
20. Count II of Plaintiff's Complaint asserts a claim for an accounting at law of all rents due under a lease dated July 24, 1987. *See Plaintiff's Complaint, Count II.*
21. Count II of Plaintiff's Complaint is barred by the applicable statute of limitations and should be dismissed with prejudice.
22. Count III of Plaintiff's Complaint asserts a claim for an accounting at law of all rents due under a lease dated December 31, 1992.
23. Count III of Plaintiff's Complaint is barred by the applicable statute of limitations and should be dismissed with prejudice.
24. Additionally, Plaintiff's Complaint fails to aver, in either Count I, II or III, that Plaintiff, at any point in time prior to the filing of the instant matter, insisted on rent paid in accordance with the one cent a gallon or the payment of real estate taxes.
25. Inasmuch, Plaintiff, by his silence, is barred by the doctrine of promissory estoppel from enforcing said particular provisions of the lease(s).
26. Consequently, Plaintiff's claims in Counts I, II and III for past real estate taxes and rent based upon one cent a gallon should be dismissed with prejudice.

27. Counts I, II and III of Plaintiff's Complaint should be dismissed with prejudice because paragraph 17 of the 1992 Lease provides that "the Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rental penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this Lease." *See* Plaintiffs Complaint, Exhibit "C", ¶ 17.

WHEREFORE, Defendants respectfully this Honorable Court grant their Motion for Judgment on the Pleadings and dismiss Plaintiff's Complaint with prejudice. In the alternative, Defendants request this Honorable Court grant their Motion for Judgment on the Pleadings in regard to their claim of promissory estoppel and dismiss Plaintiff's claims for past real estate taxes and additional rent based upon gallonage sold with prejudice and grant Defendants any other relief this Honorable Court deems appropriate.

By:

Respectfully submitted,
MITINGER & DE BOEF

Anthony G. De Boef, Esq.
Attorney for Defendants
I.D. No. 71532
432 Rolling Ridge Drive, Ste 3A
State College, PA 16801
(814)-231-4052

Dated: 3/15/06

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

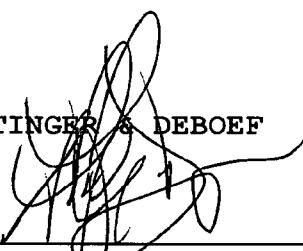
EDWARD C. MILLER,	:
Plaintiff	:
v.	: No. 2004-00451-C.D.
:	
BEARD OIL COMPANY; BEARD OIL	:
COMPANY, INC.; J.V. INC., d/b/a	:
BEARD OIL; J.V. INC., d/b/a SHANER ENERGY;	:
SHANER ENERGY, INC.; and SHANER	:
OPERATING GROUP CORP. t/d/b/a	:
SHANER HOTEL GROUP,	:
Defendants	: JURY TRIAL DEMANDED
:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within instrument was served upon Toni M. Cherry, Esq., counsel for Plaintiff by mailing the same via United States First Class Mail, postage prepaid, by depositing the same in the United States Mail, addressed as follows:

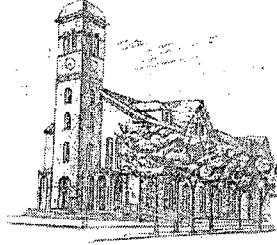
TONI M. CHERRY ESQ.
Gleason, Cherry and Cherry
P.O. Box 505
DuBois, PA 15801-0505

By:

MITINGER & DEBOEF


Anthony G. DeBoef, Esq.
432 Rolling Ridge Drive, Ste 3A
State College, PA 16801
(814)-231-4052

Dated: 3/15/06



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 3/21/06

You are responsible for serving all appropriate parties.

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

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

EDWARD C. MILLER,	:	
	Plaintiff	:
v.	:	No. 2004-00451-C.D.
:		
BEARD OIL COMPANY; BEARD OIL	:	
COMPANY, INC.; J.V. INC., d/b/a	:	
BEARD OIL; J.V. INC., d/b/a SHANER ENERGY;	:	
SHANER ENERGY, INC.; and SHANER	:	
OPERATING GROUP CORP. t/d/b/a	:	
SHANER HOTEL GROUP,	:	
	Defendants	JURY TRIAL DEMANDED
:		

ORDER

AND NOW, this 20th day of April 2006, it is hereby ORDERED and DECREED as follows:

Defendants' Brief in Support of Defendants' Motion for Judgment on the Pleadings shall be submitted to the Court and served on opposing counsel no later than April 31, 2006.

Plaintiff shall have ten (10) days thereafter to submit a Brief in Opposition and serve the same upon opposing counsel.

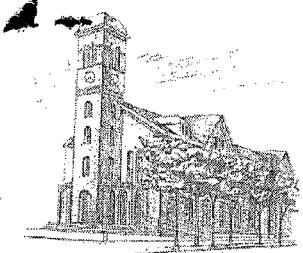
BY THE COURT:

Judee J Ammerman
Ammerman, J.

Ammerman, J.

FILED 1cc Attnys:
04/00/06 T.Cherry
APR 21 2006 DeBoef

William A. Shaw
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 4/21/06

You are responsible for serving all appropriate parties.

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

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

(PA)

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

EDWARD C. MILLER, :
Plaintiff, : No. 04-451-CD

v. :
BEARD OIL COMPANY, et al., :
Defendants. :
:

FILED
OCT 12 2006 (with memo)
JUL 12 2006 ICC S. M. Keseck
William A. Shaw
Prothonotary/Clerk of Court
CIA
Without
memo
(6)

OPINION

At issue in this case is a commercial lease for real property, located in Sandy Township, Clearfield County. Plaintiff, Edward C. Miller claims damages for Defendants' alleged breach of the lease. Defendants' contest Plaintiff's lawsuit is barred by the applicable statute of limitations. The Defendants have filed a Motion for Judgment on the Pleadings and maintain that Plaintiff's claims related to the alleged breach are invalid as a matter of law.

Pennsylvania Rule of Civil Procedure 1034(a) provides "[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings." A motion for judgment on the pleadings is in the nature of a demurrer in which all of the opposing party's well-pleaded allegations are viewed as true, but only those facts specifically admitted by the opposing party may be considered against him. Felli v. Com. Dept. of Transportation, 666 A.2d 775 (Pa.Cmwlth. 1995) *reargument denied*. A motion for judgment on the pleadings should be granted only where the pleadings demonstrate that no genuine issue of fact exists, and the moving party is entitled to judgment as a matter of law. Kelly v. Nationwide Insurance Co., 606 A.2d 470 (Pa.Super. 1992).

The Plaintiff initiated a prior civil action against Defendants (docketed at 2000-355-CD), which was ultimately discontinued after entry of a Voluntary Nonsuit pursuant to Pa.R.Civ.P. 230 on March 31, 2004. The Pennsylvania Superior Court, in Williams Photography by Tallas, Inc. v. Nationwide Mutual Fire Insurance Company, 550 A.2d 1333 (Pa.Super. 1988) *appeal*

denied 588 A.2d 510 (Pa. 1990), explained the effect of the statute of limitations and a subsequent action after entry of a voluntary nonsuit. The Williams Court determined that

[T]he statute of limitations is not tolled by the commencement of a suit subsequently dismissed without prejudice through a plaintiff's entry of a voluntary nonsuit. Consequently, we find that plaintiff must file his second suit prior to the running of the applicable statute of limitations or his second suit will be time-barred despite his procedural right to refile under Rule 231.

Id. at 1337. Accordingly, Plaintiff's present action must also comply with the applicable statute of limitations.

Defendants allege Plaintiff's claim is barred by the four-year statute of limitations period governing commencement of contract actions contained in 42 Pa.C.S.A. § 5525. On the other hand, Plaintiff alleges the present case is governed by 42 Pa. C.S.A. § 5529 that provides a twenty-year period to institute an action upon a written contract under seal.

The case of Township of Indiana v. Acquisitions & Mergers, Inc. et al., 770 A.2d 364 (Pa. Cmwlth. 2001) is directly on point. In Indiana, the Commonwealth Court determined which statute of limitations provision should govern the contract dispute. Specifically, the Court addressed whether the action was barred by the four-year limitation period, or whether the agreement(s) were under seal, in which the action would be governed by the twenty-year statute of limitations. Id. at 375.

The Commonwealth Court analyzed both § 5525 and §5529, and provided guidance in determining which proper statute of limitations provision to apply.

Based on a collective reading of these statutory provisions, we conclude the following: (1) the four-year limitation period set forth in § 5525(7) applies to negotiable and nonnegotiable bonds, notes or other similar instruments in writing that are *not under seal*; (2) the 20-year limitation period set forth in § 5529(b)(1) applies to negotiable and nonnegotiable bonds, note or other similar instruments in writing that *are* under seal; and (3) the four-year limitation period set forth in § 5525(8) applies to all contracts in writing that do not constitute negotiable or nonnegotiable bonds, notes or other similar instruments, *irrespective of whether or not the contract is under seal*.

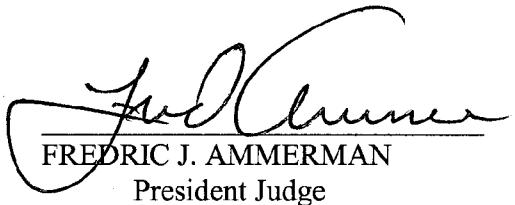
Id. at 376. Instantly, the leases in controversy were signed in 1981 and 1987 respectively. (Complaint, Count I and Count II). Plaintiff alleges Defendant breached the lease in that "Defendants did not operate the service station for the full lease term, stopping operations at or about the end of the month of September of 1997." (Complaint, ¶ 40). The present action was commenced via a Praeclipe for Writ of Summons filed with the Clearfield County Prothonotary on April 1, 2004. Clearly, the time lapse is in excess of the statutory four-year period.

The Pennsylvania Supreme Court reached a similar conclusion in the case of Gustine Uniontown Associates, Ltd. v. Anthony Crane Rental, Inc., 842 A.2d 334 (Pa. 2004). Gustine addressed the appropriate statute of limitations for bringing a claim related to a written construction contract. After an extensive analysis, the Court concluded the four-year time limit provided in 42 Pa. C.S.A. § 5525(a)(8) was applicable. The Court stressing the importance of upholding legislative intent, noted:

The error in the approach of the Superior Court is clear. Like the earlier Superior Court panel in *Romeo*, the panel in the case *sub judice* decided a question of statutory interpretation based upon public policy concerns, without any predicate finding of statutory ambiguity. The fact that the previous version of the statute provided a six-year period of limitation for actions upon written contracts, while the amended statute made those very same actions subject to a four-year period is no basis for a finding of ambiguity.

Id. at 348. Therefore, Plaintiff's Complaint is barred by the four-year statute of limitations period

BY THE COURT,



FREDERIC J. AMMERMAN
President Judge

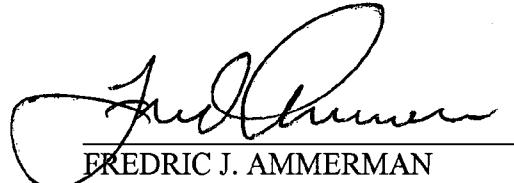
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

EDWARD C. MILLER, :
Plaintiff, : No. 04-451-CD
:
v. :
:
BEARD OIL COMPANY, et al., :
Defendants. :
:

ORDER

NOW, this 11th day of July 2006, it is the Order of this Court that the Defendants' Motion for Judgment on the Pleadings filed on March 20, 2006, be and is hereby GRANTED. Plaintiff's Complaint is DISMISSED with prejudice.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

JUL 12 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/12/06

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other
 Defendant(s) Defendant(s) Attorney

Special Instructions:

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

EDWARD C. MILLER,
Plaintiff

v.

BEARD OIL COMPANY; BEARD OIL
COMPANY, INC.; J.V. INC., d/b/a
BEARD OIL; J.V. INC., d/b/a SHANER
ENERGY; SHANER ENERGY, INC.; and
SHANER OPERATING CORP. t/d/b/a
SHANER HOTEL GROUP,
Defendants

No. 2004-00451-CD

RECEIPT

JUL 29 2004

COURT ADMINISTRATORS
OFFICE

DEFENDANT'S BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS
TO PLAINTIFF EDWARD C. MILLER'S COMPLAINT

AND NOW comes Defendants Beard Oil Company; Beard Oil Company, Inc.; J.V. Inc., d/b/a Beard Oil; J.V. Inc., d/b/a Shaner Energy; Shaner Energy, Inc.; and Shaner Operating Corp. t/d/b/a Shaner Hotel Group, by and through their attorney, Anthony G. De Boef, of Mitinger and De Boef and submits the following brief in support of preliminary objections.

Preliminary Background

Plaintiff commenced the above-captioned matter by the filing of a Complaint on or about May 25, 2004. Plaintiff's Complaint asserts the following Counts: Count I - Claim for an Accounting at Law for All Rents Due Under the Lease Dated October 1, 1981, between Edward C. Miller and Beard Oil Company, Inc.; Count II - Claim for an Accounting at Law for All Rents Due Under the Lease Dated July 24, 1987, between Edward C. Miller and Beard Oil Company;

and Count III - Claim for an Accounting at Law for All Rents Due Under the Lease Dated December 31, 1992, between Edward C. Miller and J.V. Inc., d/b/a Beard Oil and for Other Damages.

Defendants filed their Preliminary Objections to Plaintiff's Complaint instantly before this Court for consideration on or about June 18, 2004.

Discussion

Defendants have filed two (2) preliminary objections to Plaintiff's Complaint. In reviewing preliminary objections, only facts that are well-pleaded, material, and relevant will be considered as true, together with such reasonable references that may be drawn from those facts; preliminary objections will only be sustained if they are clear and free from doubt. Snare v. Ebensburg Power Co., 431 Pa.Super. 515, 637 A.2d 296 (1993), alloc. denied 646 A.2d 1181.

Defendants' first preliminary objection, in the nature of a motion to strike attorney's fees and costs in Counts I, II and III of Plaintiff's complaint, is filed pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2). Plaintiff's Complaint, in Counts I, II and III, requests the award of attorney's commission in the amount of 5% and costs on the collection of real estate taxes, gallonage delivered to the premises and on all amounts owed to Plaintiff, including interest. See Plaintiff's Complaint ¶ 23(a) and (d), ¶ 36(a) and (d), and p. 15, ¶ (a), (c) and (d).

Exhibits "A", "B" and "C" to Plaintiff's Complaint provide that "[i]n the event the Lessee shall be in default of any payment of rent herein provided, the Lessor may thereupon give to said Lessee ten (10) days written notice of such default and at the expiration of said time the Lessee, if the amount of rent still remains unpaid, does authorize any attorney of record in the state of

Pennsylvania to appear for it and confess judgment against it for said amount of rental unpaid and interest, with five (5%) percent attorney's commission and with costs for collection of same" Plaintiff's Complaint, Exhibit "A", ¶ 14, Exhibit "B", ¶ 14, and Exhibit "C" ¶ 14.

"It is well established that a litigant is responsible for his own counsel fees absent an agreement by the parties or some other established exception." Koffman v. Smith, 435 Pa.Super. 15, 682 A.2d 1282, 1292 (1996) (citations omitted). Instantly, a review of Plaintiff's Complaint indicates Plaintiff has failed to aver that Plaintiff, at any time, gave any of the Defendants ten (10) days written notice of any such default. Inasmuch, there is no valid agreement between the parties regarding the payment of attorney's fees and each party is therefore responsible for their own counsel fees.

Alternatively, as set forth in Exhibits "A", "B" and "C", Plaintiff is only entitled to the collection of attorney's commission in the amount of five (5%) and costs on rent, not real estate taxes or excess gallonage. *See* Plaintiff's Complaint, Exhibits "A" ¶ 14, Exhibit "B" ¶ 14, and Exhibit "C" ¶ 14.

Wherefore, Defendants respectfully request this Honorable Court sustain their preliminary objection to strike Plaintiff's request for attorney commission in the amount of five (5%) percent and costs in Counts I, II and III of Plaintiff's Complaint.

Defendants' second preliminary objection, filed pursuant to Pennsylvania Rule of Civil Procedure 1028(2)(4) and 2232, is in the nature of a demurrer (legal insufficiency) and misjoinder of a party as to Defendant Shaner Energy, Inc., and Shaner Operation Corp. t/d/b/a Shaner Hotel Group. The standard for determining whether or not a preliminary objection in the nature of a demurrer should be sustained is well-established in Pennsylvania:

[P]reliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by a demurrer. In order to sustain a demurrer, it is essential that the face of the complaint indicate that its claims may not be sustained and the law will not permit a recovery. If there is any doubt, it should be resolved by the overruling of the demurrer.

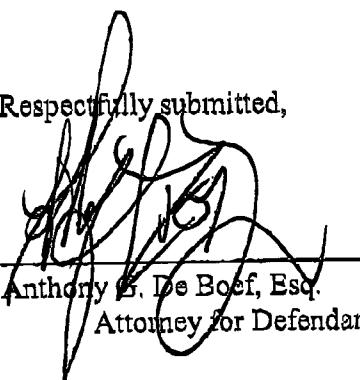
Mellon Bank, N.A. v. Fabinyi, 437 Pa.Super. 559, 650 A.2d 895 (1994).

Plaintiff, in addition to other numerous Defendants, has named Shaner Energy, Inc., and Shaner Operating Corp. t/d/b/a Shaner Hotel Group as parties in the matter presently before the Court for consideration. "Misjoined parties are parties who have been improperly joined because their joinder is neither required nor permitted under the joinder rules." Standard Pennsylvania Practice 2d § 14:238. Additionally, "[a]fter notice to all parties, a party may be dropped by order of the court whenever the party has been misjoined. . ." Pa.R.C.P. 2232(b).

Instantly, a review of the Exhibits attached to Plaintiff's Complaint reveals that Shaner Energy, Inc., and Shaner Operating Corp. t/d/b/a Shaner Hotel Group were never a party to any alleged lease, and, therefore, have been misjoined and lack the capacity to be sued.

Wherefore, Defendants respectfully request this Honorable Court sustain their preliminary objection and dismiss Plaintiff's Complaint against Defendants Shaner Energy, Inc., and Shaner Operating Corp. t/d/b/a Shaner Hotel Group.

Respectfully submitted,


Anthony B. De Boef, Esq.
Attorney for Defendants

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

EDWARD C. MILLER,
Plaintiff

v.

No. 2004-00451-CD

BEARD OIL COMPANY; BEARD OIL
COMPANY, INC.; J.V. INC., d/b/a
BEARD OIL; J.V. INC., d/b/a SHANER
ENERGY; SHANER ENERGY, INC.; and
SHANER OPERATING CORP. t/d/b/a
SHANER HOTEL GROUP,
Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Brief in Support of Preliminary Objections to Plaintiff's Complaint was hereby served upon Toni M. Cherry, Esq., counsel for Plaintiff, by mailing the same UPS overnight mail, mailing fees prepaid, addressed as follows:

TONI M. CHERRY ESQ.
Gleason, Cherry and Cherry
P.O. Box 505
DuBois, PA 15801-0505

By facsimile to No. (814) 371-0936

By:

MITINGER & DEBOEF

Anthony G. DeBoef, Esq.
2147 E. College Avenue
State College, PA 16801
(814)-231-4052

Dated:

7/28/04

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

EDWARD C. MILLER,	:	
Plaintiff	:	
v.	:	No. 2004-00451-CD
BEARD OIL COMPANY; BEARD OIL	:	RECEIVED
COMPANY, INC.; J.V. INC., d/b/a	:	
BEARD OIL; J.V. INC., d/b/a SHANER	:	JUL 30 2004
ENERGY; SHANER ENERGY, INC.; and	:	
SHANER OPERATING CORP. t/d/b/a	:	COURT ADMINISTRATOR'S
SHANER HOTEL GROUP,	:	OFFICE
Defendants	:	
	:	

DEFENDANT'S BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS
TO PLAINTIFF EDWARD C. MILLER'S COMPLAINT

AND NOW comes Defendants Beard Oil Company; Beard Oil Company, Inc.; J.V. Inc., d/b/a Beard Oil; J.V. Inc., d/b/a Shaner Energy; Shaner Energy, Inc.; and Shaner Operating Corp. t/d/b/a Shaner Hotel Group, by and through their attorney, Anthony G. De Boef, of Mitinger and De Boef and submits the following brief in support of preliminary objections.

Preliminary Background

Plaintiff commenced the above-captioned matter by the filing of a Complaint on or about May 25, 2004. Plaintiff's Complaint asserts the following Counts: Count I - Claim for an Accounting at Law for All Rents Due Under the Lease Dated October 1, 1981, between Edward C. Miller and Beard Oil Company, Inc.; Count II - Claim for an Accounting at Law for All Rents Due Under the Lease Dated July 24, 1987, between Edward C. Miller and Beard Oil Company;

and Count III - Claim for an Accounting at Law for All Rents Due Under the Lease Dated December 31, 1992, between Edward C. Miller and J.V. Inc., d/b/a Beard Oil and for Other Damages.

Defendants filed their Preliminary Objections to Plaintiff's Complaint instantly before this Court for consideration on or about June 18, 2004.

Discussion

Defendants have filed two (2) preliminary objections to Plaintiff's Complaint. In reviewing preliminary objections, only facts that are well-pleaded, material, and relevant will be considered as true, together with such reasonable references that may be drawn from those facts; preliminary objections will only be sustained if they are clear and free from doubt. Snare v. Ebensburg Power Co., 431 Pa.Super. 515, 637 A.2d 296 (1993), *alloc. denied* 646 A.2d 1181.

Defendants' first preliminary objection, in the nature of a motion to strike attorney's fees and costs in Counts I, II and III of Plaintiff's complaint, is filed pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2). Plaintiff's Complaint, in Counts I, II and III, requests the award of attorney's commission in the amount of 5% and costs on the collection of real estate taxes, gallonage delivered to the premises and on all amounts owed to Plaintiff, including interest. *See* Plaintiff's Complaint ¶ 23(a) and (d), ¶ 36(a) and (d), and p. 15, ¶ (a), (c) and (d).

Exhibits "A", "B" and "C" to Plaintiff's Complaint provide that "[i]n the event the Lessee shall be in default of any payment of rent herein provided, the Lessor may thereupon give to said Lessee ten (10) days written notice of such default and at the expiration of said time the Lessee, if the amount of rent still remains unpaid, does authorize any attorney of record in the state of

Pennsylvania to appear for it and confess judgment against it for said amount of rental unpaid and interest, with five (5%) percent attorney's commission and with costs for collection of same" Plaintiff's Complaint, Exhibit "A", ¶ 14, Exhibit "B", ¶ 14, and Exhibit "C" ¶ 14.

NO
"It is well established that a litigant is responsible for his own counsel fees absent an agreement by the parties or some other established exception." Koffman v. Smith, 435 Pa.Super. 15, 682 A.2d 1282, 1292 (1996) (citations omitted). Instantly, a review of Plaintiff's Complaint indicates Plaintiff has failed to aver that Plaintiff, at any time, gave any of the Defendants ten (10) days written notice of any such default. Inasmuch, there is no valid agreement between the parties regarding the payment of attorney's fees and each party is therefore responsible for their own counsel fees.

Alternatively, as set forth in Exhibits "A", "B" and "C", Plaintiff is only entitled to the collection of attorney's commission in the amount of five (5%) and costs on rent, not real estate taxes or excess gallonage. *See* Plaintiff's Complaint, Exhibits "A" ¶ 14, Exhibit "B" ¶ 14, and Exhibit "C" ¶ 14.

Wherefore, Defendants respectfully request this Honorable Court sustain their preliminary objection to strike Plaintiff's request for attorney commission in the amount of five (5%) percent and costs in Counts I, II and III of Plaintiff's Complaint.

Defendants' second preliminary objection, filed pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(4) and 2232, is in the nature of a demurrer (legal insufficiency) and misjoinder of a party as to Defendant Shaner Energy, Inc., and Shaner Operation Corp. t/d/b/a Shaner Hotel Group. The standard for determining whether or not a preliminary objection in the nature of a demurrer should be sustained is well-established in Pennsylvania:

[P]reliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by a demurrer. In order to sustain a demurrer, it is essential that the face of the complaint indicate that its claims may not be sustained and the law will not permit a recovery. If there is any doubt, it should be resolved by the overruling of the demurrer.

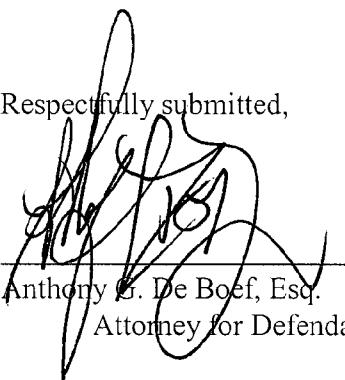
Mellon Bank, N.A. v. Fabinyi, 437 Pa.Super. 559, 650 A.2d 895 (1994).

Plaintiff, in addition to other numerous Defendants, has named Shaner Energy, Inc., and Shaner Operating Corp. t/d/b/a Shaner Hotel Group as parties in the matter presently before the Court for consideration. "Misjoined parties are parties who have been improperly joined because their joinder is neither required nor permitted under the joinder rules." Standard Pennsylvania Practice 2d § 14:238. Additionally, "[a]fter notice to all parties, a party may be dropped be order of the court whenever the party has been misjoined. . ." Pa.R.C.P. 2232(b).

Instantly, a review of the Exhibits attached to Plaintiff's Complaint reveals that Shaner Energy, Inc., and Shaner Operating Corp. t/d/b/a Shaner Hotel Group were never a party to any alleged lease, and, therefore, have been misjoined and lack the capacity to be sued.

Wherefore, Defendants respectfully request this Honorable Court sustain their preliminary objection and dismiss Plaintiff's Complaint against Defendants Shaner Energy, Inc., and Shaner Operating Corp. t/d/b/a Shaner Hotel Group.

Respectfully submitted,


Anthony G. De Boef, Esq.
Attorney for Defendants

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

EDWARD C. MILLER,	:
Plaintiff	:
v.	:
	No. 2004-00451-CD
BEARD OIL COMPANY; BEARD OIL	:
COMPANY, INC.; J.V. INC., d/b/a	:
BEARD OIL; J.V. INC., d/b/a SHANER	:
ENERGY; SHANER ENERGY, INC.; and	:
SHANER OPERATING CORP. t/d/b/a	:
SHANER HOTEL GROUP,	:
Defendants	:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Brief in Support of Preliminary Objections to Plaintiff's Complaint was hereby served upon Toni M. Cherry, Esq., counsel for Plaintiff, by mailing the same UPS overnight mail, mailing fees prepaid, addressed as follows:

TONI M. CHERRY ESQ.
Gleason, Cherry and Cherry
P.O. Box 505
DuBois, PA 15801-0505

By facsimile to No. (814) 371-0936

MITNUNGEN & DEBOEF

By:

Anthony G. DeBoef, Esq.
2147 E. College Avenue
State College, PA 16801
(814)-231-4052

Dated: 7/28/04

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

EDWARD C. MILLER,

Plaintiff

vs.

BEARD OIL COMPANY; BEARD OIL
COMPANY, INC.; J. V., INC., d/b/a
BEARD OIL; J. V., INC., d/b/a SHANER
ENERGY; SHANER ENERGY, INC.;
and SHANER OPERATING CORP.,
t/d/b/a SHANER HOTEL GROUP,

Defendants

: No. 2004 - 451 C.D.

: Type of Case: CIVIL

: Type of Pleading: PLAINTIFF'S BRIEF IN
: DEFENSE OF PRELIMINARY OBJECTIONS
: FILED BY DEFENDANTS

: Filed on Behalf of: EDWARD C. MILLER,
: Plaintiff

: Counsel of Record for this Party:

: TONI M. CHERRY, ESQ.
: Supreme Court No.: 30205

: GLEASON, CHERRY AND
: CHERRY, L.L.P.
: Attorneys at Law
: P.O. Box 505
: One North Franklin Street
: DuBois, PA 15801

: (814) 371-5800

RECEIVED

AUG 16 2004

COURT ADMINISTRATOR'S
OFFICE

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

EDWARD C. MILLER,
Plaintiff
vs.
BEARD OIL COMPANY; BEARD OIL
COMPANY, INC.; J. V., INC., d/b/a
BEARD OIL; J. V., INC., d/b/a SHANER
ENERGY; SHANER ENERGY, INC.;
and SHANER OPERATING CORP.,
t/d/b/a SHANER HOTEL GROUP,
Defendants

PLAINTIFF'S BRIEF IN DEFENSE OF
PRELIMINARY OBJECTIONS FILED BY DEFENDANTS

History of the Case:

Plaintiff, EDWARD C. MILLER, is a resident of Sandy Township, Clearfield County, Pennsylvania, and the owner of real estate located along Route 219 North in the Township upon which has been erected a gasoline and oil service station that Plaintiff has leased to the Defendants and their predecessors in title over the last 35 to 40 years.

The leases which form the basis for the damages claimed by Plaintiff in his Complaint are the 1981 Lease entered into with Beard Oil Company, Inc., the Lease entered into with Beard Oil Company as the named Lessee on July 24, 1987, and the Lease entered into on December 31, 1992, with J. V., Inc., d/b/a Beard Oil, as the named Lessee, all of whom are named as Defendants in this lawsuit.

In addition, the allegations in Paragraphs 2 through 9 inclusive of the Complaint set forth the relationships among the named Defendants as parent and subsidiary companies that would form the basis of liability for each individual Defendant.

Defendants have filed Preliminary Objections to the Complaint in the nature of a Motion to Strike Attorney's Fees and Costs and in the nature of a Demurrer raising the claim of legal insufficiency and misjoinder of a party as to Defendants, Shaner Energy, Inc., and Shaner Operating Corp., t/d/b/a Shaner Hotel Group.

There are no Preliminary Objections allowed under Pa. R.C.P. 1028 permitting the challenging of a claim for attorney's fees as that is a claim to be raised in New Matter. However, in the interest of judicial economy and in the hopes that this issue can be resolved at this level, Plaintiff does file this Brief in answer to those improperly-pleaded Preliminary Objections. Likewise, there is no Preliminary Objections entitled "Misjoinder of a Party". The only Preliminary Objections allowed for misjoinder is the "Misjoinder of a Cause of Action". Even though Defendants' Preliminary Objections have no basis in law and are not filed pursuant to the Pennsylvania Rules of Civil Procedure, Plaintiff again answers those matters in this Brief in the hopes of dismissing Defendants' specious claims once and for all.

Issues:

- I. WHETHER DEFENDANTS ARE ENTITLED TO HAVE PLAINTIFF'S CLAIM FOR ATTORNEY'S FEES AND COSTS STRUCK THROUGH PRELIMINARY OBJECTIONS? NO.
- II. WHETHER DEFENDANTS ARE ENTITLED TO HAVE THE COMPLAINT AS TO DEFENDANTS, SHANER ENERGY, INC., AND SHANER OPERATING CORP., t/d/b/a SHANER HOTEL GROUP, DISMISSED THROUGH PRELIMINARY OBJECTIONS? NO.

Argument:

- I. DEFENDANTS ARE NOT ENTITLED TO HAVE PLAINTIFF'S CLAIM FOR ATTORNEY'S FEES AND COSTS STRUCK THROUGH PRELIMINARY OBJECTIONS.

Plaintiff acknowledges that there can be no recovery for counsel fees from the adverse party to a cause in the absence of express statutory allowance of the same, or clear agreement by the parties, or some other established exception. Chatham Communications, Inc. v. General Press Corp., 463 Pa. 292, ___, 344 A.2d 837, 842 (1975) (citations omitted). However, Plaintiff contends that there is an agreement between the parties that Plaintiff is entitled to an award of counsel fees in the event that he is forced to seek damages for violation of the terms of the various leases entered into between the parties because of the non-payment of rent and other obligations due under the leases by Defendants.

The language entitling Plaintiff to claim attorney's fees against Defendants appears in substantially the same form in every one of the leases attached to the Complaint which were all drawn by the Defendants:

In the event the Lessee shall be in default of any payment of rent herein provided, the Lessor may thereupon give to the said Lessee ten (10) days written notice of such default and at the expiration of said time the Lessee, if the amount of rental still remains unpaid, does authorize any attorney of record in the State of Pennsylvania to appear for it and to confess judgment against it for said amount of rental unpaid and interest, with five (5%) per cent attorney's commission and with costs for the collection of same, waiving all exemption laws in force or hereafter to be passed and

(Paragraph 14 of 1981 Lease; Paragraph 14 of 1987 Lease; Paragraph 14 of 1992 Lease).

The foregoing language is the same type of language appearing in Promissory Notes, Judgment Notes and Mortgages and has already been interpreted to give the creditor the right to seek and receive attorney's fees in consequence of the default of the debtor by agreement of the parties. See Eastgate Enterprises, Inc. v. Bank and Trust Co. of Old York Road, 98 Montg. 319, affirmed 236 Pa.Super. 503, 345 A.2d 279 (1974). The language requiring notice prior to the confession of judgment in the paragraph is permissive only and this Complaint constitutes notice that Plaintiff is claiming a default. In any event, whether the paragraph is applicable in this case is not a matter authorized to be determined by the Court through Preliminary Objections but is a matter requiring factual hearing before the Court and must be determined at trial.

Defendants try to argue that Plaintiff is not entitled to attorney's fees for non-payment of real estate taxes and other obligations under the leases. However, that assertion ignores the language of the leases and presents a question of fact to be determined by your Honorable

Court after full hearing. Plaintiff contends that Defendants were obligated to pay all charges for water, gas and electricity as well as the portion of the real estate taxes which apply to the land rented as further rent. The question of whether or not that interpretation is correct is not a matter for Preliminary Objections nor for summary judgment argument but must be determined after trial. Consequently, Defendants' attempt to raise Preliminary Objections to questions Plaintiff's clear right to demand an award of counsel fees by agreement of the parties as authorized by the language of the leases is improper and must be dismissed.

*para 6 of lease re water, gas &
electric, real
est taxes*

II. DEFENDANTS ARE NOT ENTITLED TO HAVE THE COMPLAINT AS TO DEFENDANTS, SHANER ENERGY, INC., AND SHANER OPERATING CORP., t/d/b/a SHANER HOTEL GROUP, DISMISSED THROUGH PRELIMINARY OBJECTIONS.

Defendants' arguments that Plaintiff's Complaint fails to state a cause of action against Shaner Energy, Inc., or Shaner Operating Corp., t/d/b/a Shaner Hotel Group, because neither of these entities were a named party to any of the leases is not only an improper argument on Preliminary Objections but is unquestionably, patently false and a knowingly misleading statement to the Court.

First of all, a preliminary objection on the ground of legal insufficiency of the pleading, in the nature of a demurrer, admits all well-pleaded material facts as well as all reasonable inferences deducible therefrom. Firing v. Kephart, 466 Pa. 560, 353 A.2d 833 (1976).

Paragraph 8 of Plaintiff's Complaint asserts the following:

That Defendant, SHANER ENERGY, INC., is the parent company of Defendant, J. V., INC., d/b/a BEARD OIL, and Defendant, J. V., INC., t/d/b/a SHANER ENERGY, and both of the foregoing Defendants have always held themselves out as SHANER ENERGY, INC., companies.

The foregoing is a well-pleaded material fact that must be accepted as true by the Court in determining Preliminary Objections. Shaner Energy, Inc., as a parent and successor to one of the companies that signed one of the leases, establishes Shaner Energy, Inc., as a responsible defendant in this action. By way of further answer, Plaintiff attaches hereto as Exhibit "A" of this Brief a letter written by the corporate counsel of the Shaner Hotel Group to the Pennsylvania Department of Environmental Protection on December 21, 1998. In that letter, written on Shaner Hotel Group stationery, admits that Shaner Energy, Inc., is the successor to Beard Oil Company. Moreover, an investigation of the Pennsylvania Department of State's website verifies that each of the Defendants above-named are inter-related companies and those questions as to which of the Defendants are actually liable are matters of fact to be determined by your Honorable Court at trial.

The last line of Paragraph 9 of the Complaint asserts that:

Said Defendant [SHANER OPERATING CORP t/d/b/a SHANER HOTEL GROUP] is the parent company of all of the foregoing Defendant businesses named herein.

That is a well-pleaded fact that must be taken as true for purposes of determining Preliminary Objections. As the parent company, Shaner Operating Corp., t/d/b/a Shaner Hotel Group, is responsible and liable for the wrongdoing of its subsidiary companies if your Honorable Court should determine at trial that the facts warrant holding Shaner Hotel Group and/or Shaner Operating Corp. responsible. In light of the fact that all company business is conducted on that letterhead, it would seem to indicate that all of the companies are inter-

related. (See Exhibit "A" previously referred to and Exhibit "B" attached hereto wherein matters of settlement were conducted on behalf of Defendants by corporate counsel for Shaner Hotel Group.)

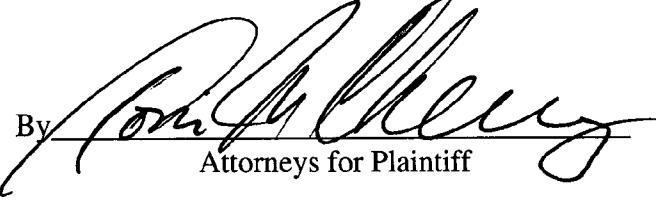
At the very least, Plaintiff has the right to prove such relationship at trial and for purposes of Preliminary Objections, the assertions in the Complaint establishing the relationship must be accepted as true.

For all of the reasons set forth above, Defendants' Preliminary Objections must be dismissed and Defendants ordered to file an Answer to Plaintiff's Complaint.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By


Tom P. Cherry
Attorneys for Plaintiff

Shaner Hotel Group
Limited Partnership
Corporate Headquarters



303 North Science Park Road
State College, PA 16803
(814) 234-4460
(814) 234-3919 (Fax)

December 21, 1998

PaDEP - Division of Storage Tanks
P.O. Box 8762
Harrisburg, PA 17105-8762

UPS Overnight Delivery

RE: Facility Name: Exit 16 - Exxon, Route 219 and 180, City of DuBois, State of Pennsylvania, Clearfield County, Tanks 001 through 004, Facility I.D. #17-25261

Dear Gentlemen:

Dale Paffie of Shaner Energy, Inc., the successor to Beard Oil Company, has conferred with Bill Zeckman of your Williamsport office concerning the status of the above referred to four underground tanks.

We write this letter in our attempt to comply with the December 22, 1998 upgrade requirements.

The land upon which the underground storage tanks are placed was leased to Beard Oil pursuant to the attached Lease. As you can see, the landlord and owner of the property is Edward C. Miller, R.D. 3, Box 274, DuBois, Pennsylvania 15801 and who was represented at one time by Toni M. Cherry, Esquire, Gleason, Cherry and Cherry, P.O. Box 505, DuBois, Pennsylvania 15801-0505, telephone number (814) 371-5800.

Beard Oil terminated the aforementioned lease September 12, 1997.

The lease indicates in Paragraph 3, that upon the termination of the Lease, that all right and title and interest in improvements permanently attached to the ground or buried underground revert to and are owned by the Lessor. Furthermore, Paragraph 17 of the Lease indicates that the Lessor will save harmless and indemnify the Lessee from any and all claims, rentals, penalties, liabilities of any kind as a consequence of this Lease.

Representatives of Beard Oil have met with Mr. Miller to try to resolve this matter but we have not received any resolution nor have we received any permission to go onto the property to do any temporary closure or permanent closure of the tanks. In fact, Mr. Miller has indicated to us he might desire to continue the operation of the station utilizing the tanks which he now owns.

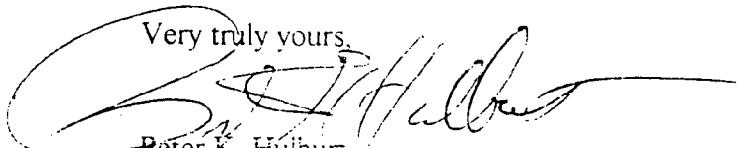
Neither Mr. Miller nor his attorneys have provided us with any documentation or made any

Exhibit "A"

PaDEP - Division of Storage Tanks
December 21, 1998
Page 2

proposals to us as to how to resolve the underground tanks which are now owned by Mr. Miller. We understand that we registered these underground tanks, but we are in the position where they are now owned by Mr. Miller and we have no right of access to deal with these tanks.

We solicit your cooperation in trying to resolve this matter to the satisfaction of all concerned.

Very truly yours,

Peter K. Hulburt
Corporate Counsel

PKH/gmr

cc: Phillip Zeckman
Williamsport DEP
208 West 3rd Street
Suite 101
Williamsport, PA 17701

UPS Overnight Delivery

Edward C. Miller
R.D 3, Box 274
DuBois, PA 15801

Certified Mail
Return Receipt Requested

Toni M. Cherry, Esquire
Dale Paffie
Lance T. Shaner

Fax: (814) 371-0936

Shaner Hotel Group
Limited Partnership
Corporate Headquarters



303 North Science Park Road
State College, PA 16803
(814) 234-4460
(814) 234-3919 (Fax)

September 14, 1999

Toni M. Cherry, Esquire
Gleason, Cherry and Cherry, L.L.P.
P.O. Box 505
DuBois, PA 15801-0505

RE: Exit 16 - Route 219 - I-80 - Prior Exxon Station

Dear Ms. Cherry:

I have now had an opportunity to confer with my client about the above referred to matter in our recent telephone call wherein you indicated that your client was willing to settle any dispute between us in reference to the above referred to matter upon Shaner Energy, Inc.'s payment of \$30,000.00 which would include your client's immediate assumption of all liabilities in reference to the underground storage tanks and a hold harmless of our company from any liability connected therewith.

Your settlement offer is undoubtedly premised on the fact that you and your client have concluded that you have a good cause of action for past due rent in reference to the lease that existed at one time between our company and your client. I continue to believe that the lease was properly terminated and your client is hard pressed to pursue recovery due to express provisions in the Lease, i.e., Hold Harmless Agreement from liability in reference to rent, etc. The Owner of the property also has the issue of the underground tanks which are currently registered in our company's name.

However, we would like to get this matter resolved. Accordingly, Shaner Energy, Inc. is willing to pay to your client, \$8,000.00, in exchange for which your client accepts registration of the underground tanks in his name and provides Shaner Energy, Inc. with a Hold Harmless Agreement from any and all liability associated with the underground tanks related to past and future events. If this generalized offer is acceptable, we can draft appropriate documents for resolution of the matter.

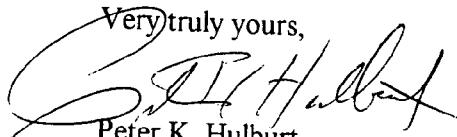
Nothing contained herein is to be construed as an admission of any material fact that may later be placed in litigation but is offered to you and your client only in the spirit of compromise in an attempt to resolve this matter short of litigation.

I point out that the fact remains that the tanks in the ground will have to be dealt with prior to December 31, 1999. By that time, the tanks will have to be pulled or brought up to current standards. It is our position that on termination of the Lease the tanks are owned by your client.

Exhibit "B"

Toni M. Cherry, Esquire
Gleason, Cherry and Cherry, L.L.P.
September 14, 1999
Page 2

Please advise at your earliest convenience.

Very truly yours,

Peter K. Hulbert
Corporate Counsel

PKH/gmr
cc: Greg Wisyanski
Lance T. Shaner

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

EDWARD C. MILLER,

Plaintiff

vs.

BEARD OIL COMPANY; BEARD OIL
COMPANY, INC.; J. V., INC., d/b/a
BEARD OIL; J. V., INC., d/b/a SHANER
ENERGY; SHANER ENERGY, INC.;
and SHANER OPERATING CORP.,
t/d/b/a SHANER HOTEL GROUP,
Defendants

No. 2004 - 451 C. D.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August, 2004, a true and correct copy of Plaintiff's Brief in Defense of Preliminary Objections Filed by Defendants was served upon ANTHONY G. DeBOEF, ESQ., counsel for Defendants, by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

ANTHONY G. DeBOEF, ESQ.
Mitinger & DeBoef
Attorneys at Law
2147 East College Avenue
State College, PA 16801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attorneys for Plaintiff

Dated: August 13, 2004