

04-501-CD
KITKO WOOD PRODUCTS, INC. vs. MUNIRE FURNITURE CO. INC.

Kitko Wood Products vs Munire Furniture
2004-501-CD

10-7-04-930

(A)

~~7-24-04-200~~

MCQUAIDE BLASKO

ATTORNEYS AT LAW

811 University Drive, State College, Pennsylvania 16801-6699
Additional offices in Hershey and Hollidaysburg

(814) 238-4926 FAX (814) 234-5620
www.mcquaideblasko.com

August 27, 2004

William Shaw, Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: Kitko Wood Products, Inc. v. Munire Furniture Co., Inc.
No. 2004-501-CD

Dear Mr. Shaw:

Enclosed please find Plaintiff's Brief in Support of its Answer and New Matter to Defendant's Petition to Open Default Judgment, and Certificate of Service for filing in the above-referenced matter.

Thank you for your attention to this matter.

Very truly yours,

McQUAIDE BLASKO

By:



Russell A. Venture

RAV/sap
Enclosure

cc\Enc.: Timothy A. Schoonover, Esquire
Robert F. Kitko, Sr.

RECEIVED

AUG 30 2004

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John G. Love (1893-1966) Roy Wilkinson, Jr. (1915-1995) Delbert J. McQuaide (1936-1997)

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

KITKO WOOD PRODUCTS, INC.,

Plaintiff,

v.

MUNIRE FURNITURE CO., INC.,

Defendant.

No. 04-501-CD

Type of Pleading:

**Brief in Support of Answer and New
Matter to Defendant's Petition to Open
Default Judgment**

Type of Case: **Civil**

Filed on behalf of: **Plaintiff**

Counsel of Record for this Party:

John A. Snyder

I.D. No. 66295

McQuaide, Blasko, Schwartz,

Fleming & Faulkner, Inc.

811 University Drive

State College, PA 16801

Phone: (814) 238-4926

Fax: (814) 238-9624

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AUG 30 2004

COURT ADMINISTRATOR'S
OFFICE

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
	:	
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

PLAINTIFF'S BRIEF IN SUPPORT OF ITS ANSWER AND
NEW MATTER TO DEFENDANT'S PETITION
TO OPEN DEFAULT JUDGMENT

AND NOW, comes Plaintiff, Kitko Wood Products, Inc., by and through its undersigned counsel, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and submits this Brief in support of its opposition to Defendant's Petition to Open Default Judgment as follows.

I. Relevant Procedural and Factual Background

Plaintiff, Kitko Wood Products, Inc. ("Kitko"), is a small business with its facilities located in Glen Hope, here in Clearfield County, Pennsylvania. Kitko is engaged in the production and sale of finished wood products and finished wood components for use in other products. Defendant, Munire Furniture Co., Inc. ("Munire"), is a manufacturer of furniture located in New Jersey. Defendant has, over time, purchased certain finished panels and wood products from Kitko forming the basis of a number of contracts between Kitko and Munire.

Beginning in late 2003, Munire became substantially in arrears with respect to payments owed Kitko for products provided. As of April, 2004 Defendant was in arrears and owed Kitko \$147,243.69. This debt represents a huge amount of money to a business of the relative size of Kitko. Furthermore, such a loss places enormous economic pressure on a small company such as

Kitko. Accordingly, Kitko retained the undersigned in an attempt to protect its interests and obtain payment for the goods that it provided.

In order to collect the \$147,243.69 that it is owed, Kitko filed a civil complaint on April 12, 2004 with this Court, and served the same on Munire.¹ The return receipts for the certified mail show that Munire received service of this lawsuit at its Clifton, New Jersey facility on April 19, 2004 and at its Kearny, New Jersey facility on April 30, 2004. True and correct copies of the certified mail return receipts are attached hereto as Exhibit "A." Plaintiff's Complaint sounds in breach of contract, unjust enrichment, and promissory estoppel. On May 3, 2004, Mr. Kurt Olender, an attorney in New Jersey, contacted the undersigned by telephone regarding Kitko's lawsuit.² During that conversation, Kitko agreed to allow Defendant an extension of time to file an answer to its Complaint. That extension was set to expire on May 31, 2004, or twenty-one (21) days after a response would otherwise have been required under the Pennsylvania Rules of Civil Procedure. At that time, Kitko expressly conditioned the extension on Munire's filing an answer to the Complaint, and expressly stated that it would not allow any extension for the filing of preliminary objections. See letter to Kurt Olender, dated May 4, 2004 a true and correct copy of which is attached hereto as Exhibit "B."

On May 5, 2004 the undersigned filed Kitko's Certificate of Service and the two certified mail Return Receipts, evincing proper service of the Complaint. On June 21, 2004, at Mr. Olender's further request, the undersigned once again agreed to a two to three week extension of time for Defendant to answer Kitko's Complaint. On July 14, 2004 twenty-three (23) days later, and eighty-six (86) days after Munire received competent service of the Complaint, Kitko filed

¹ See Munire's Petition to Open Default Judgment at ¶ 5.

² Munire does not dispute that Mr. Olender was and is counsel for Munire. In fact, they admit the same. See Munire's Petition to Open Default Judgment at ¶ 7.

its Notice of Intent to take a default judgment and sent copies of the same to both Mr. Olender and Munire.³ Then on July 28, 2004, one hundred (100) days after Munire received original service of the Complaint and two (2) days after Kitko had a right to do so,⁴ Kitko took a default judgment in this matter. Munire comes to the Court now, over one hundred and twenty (120+) days since it received proper service of the Complaint, and has filed a half-hearted and completely insufficient Petition to open that default judgment. Furthermore, rather than attaching a proposed answer to that Petition (as the Rules of Civil Procedure may have allowed), Munire has impermissibly attached proposed preliminary objections, in violation of both the express terms of the extension to answer and the Pennsylvania Rules of Civil Procedure as they apply to this case. For these and the reasons set forth below, Munire's Petition must be denied.

II. Discussion

A. By Insisting On Objecting To This Court's Jurisdiction, Munire Has Chosen A Standard That It Cannot Overcome.

By insisting on attacking this Court's personal jurisdiction over Munire (an argument that would fail regardless) Munire has chosen to avail itself to a standard with respect to opening a default judgment that it has not and, in fact, cannot overcome. Under Rule 237.3 of the Pennsylvania Rules of Civil Procedure, if a petitioner files his or her petition to open within ten days of a default judgment and requests to answer the Complaint, the Court is bound to open that judgment as long as he or she has a meritorious defense.⁵ In the case at bar, however, Munire

³ In fact, the undersigned sent Mr. Olender an e-mail message the day prior, July 13, 2004 stating that it would be filing the Notice of Intent on the following day. A true and correct copy of that e-mail is attached hereto as Exhibit "C." Accordingly, Munire had real notice of the Notice of Intent long before it admittedly received the same by mail. See Munire's Petition to Open Default Judgment at ¶ 11. It is, therefore, disingenuous for Munire to insinuate that it did not receive notice of the Notice of Intent until July 19, 2004.

⁴ Kitko's right to a default judgment fell on a Saturday, however, Plaintiff waited until Wednesday to take the same.

⁵ "Shall" is the operative word in the Rule. Pa.R.C.P. 237.3 states:

does not request the Court grant it leave to answer the Complaint, rather it requests leave to file preliminary objections. As Munire's counsel carefully points out in its brief, such a request triggers the stricter standard for opening a default judgment, which is found in Schultz v. Erie Insurance Exchange, 505 Pa. 90, 477 A.2d 471 (1984). Under Shultz, when a petitioner requests to file preliminary objections, the Court is not bound to open a default judgment, even if the petition is filed within ten (10) days and a meritorious defense exists. Rather, the Court should only exercise its discretion in opening a default judgment when "(1) the petition has been promptly filed; (2) a meritorious defense can be shown; and (3) the failure to appear can be excused." Id. at 93. Although Munire filed its Petition within eight (8) days of the default judgment and has claimed that the goods Kitko tendered were defective, it **does not** and **cannot** excuse its delay in responding to the Complaint for over one hundred (100) days. Accordingly, Munire fails the third prong of the Schultz standard and its Petition must be denied.

"[C]ourts have found routinely that a petitioner's failure to meet any "prong" of the three-part test is fatal to obtaining the relief sought. Generally, courts will not examine the facts alleged to sustain the other two prongs because failure to offer sufficient facts under one prong defeats the petition." Cross v. 50th Ward Community Ambulance Co., 528 A.2d 1369 (Pa.Super.1987) (holding that mere allegation of defective service insufficient grounds to excuse failure to answer a complaint); see also DiNardo v. Central Penn Air Services, Inc., 358

(a) A petition for relief from a judgment of non pros or of default entered pursuant to Rule 237.1 shall have attached thereto a verified copy of the complaint or answer which the petitioner seeks leave to file.

(b) If the petition is filed within ten days after the entry of the judgment on the docket, the court **shall** open the judgment if the proposed complaint or answer states a meritorious cause of action or defense.

Emphasis added.

The Notes to Pa.R.C.P. 237.3 are clear:

"A defendant who seeks to file a pleading other than an answer [i.e. preliminary objections] is not entitled to the benefit of this rule but must comply with the requirements of Schultz v. Erie Insurance Exchange, supra."

Pa.Super. 1187, 516 A.2d 1187 (1986)(deciding unjustified reliance on insurance company to defend a lawsuit is not a justifiable explanation as to why defendant failed to respond to a complaint). Munire has failed to provide the Court with a justifiable excuse why it failed to respond to Kitko's Complaint for one hundred (100) days, therefore, its Petition must be denied.

Furthermore, although cited by Munire in its brief, Schultz actually supports Kitko's argument that Munire has failed to establish any excuse (the third prong) for not responding to the Complaint before a default judgment was taken. Schultz supra. In Schultz, the Pennsylvania Supreme Court reversed the Superior Court's reversal of a trial Court's denial of a petition to open a default judgment. Plaintiff, Schultz, sued Erie Insurance ("Erie") on February 14, 1979. However, Erie's counsel did not receive the Complaint from its client for some twenty-two (22) days. Id. at 92. Twenty-eight (28) days after service of the complaint, Schultz took a default judgment. Even accepting Erie's excuse in its petition that its counsel "had not been informed as to when the complaint was received... so that he could take appropriate action by responding to the complaint in other than routine fashion" as completely true,⁶ the Supreme Court found this excuse to be utterly insufficient under the Rule. As weak as Erie's excuse was in Schultz, at least it offered an excuse, even though it was ultimately deemed to be insufficient. Here, Munire has offered no real excuse.⁷ Therefore, Munire undeniably fails the third prong of Schultz, and its Petition to Open Default Judgment must be denied.

⁶ Normally, the averments of the answer are deemed to be admitted for purposes of deciding a petition to open a default judgment. However, in Schultz, the plaintiff's answer was determined to be a general denial, which under Pennsylvania law is deemed to be an admission. Erie's averments were, therefore, accepted by the Court as true. Accordingly, under Schultz, Kitko's averments in its Answer should be considered true in determining Munire's Petition to Open the Default.

⁷ That is, unless allegations that Munire was trying to amicably resolve a completely unrelated dispute qualify as an excuse not to respond to a live civil action here in Clearfield.

As noted, Munire has given no reason that excuses its failure to respond to the Complaint for over one hundred (100) days, except that it was involved in an unrelated dispute. To that end, in its brief, Munire references other, legally unconnected, contractual relations that it has or had with Lajobe, Inc. and Babies R Us, Inc. However, neither Lajobe nor Babies R Us have any privity with Kitko or any connection to the contracts that are the subject of this dispute. Accordingly, they are neither indispensable to this matter, nor even properly named in the same. It is no excuse for Munire not to have responded to Kitko's Complaint based on unrelated disputes with unrelated firms. Just because another firm fails to pay on a different contract, does not mean that they are indispensable parties to this dispute. Furthermore, if Munire's position is that Kitko was not entitled to payment under the contract for defects in the product, it should have defended this contract action on those grounds when it had the chance. As Munire has failed to offer a real excuse why it failed to Respond to Kitko's Complaint, this Court should not disturb the judgment currently in Kitko's favor.

Simply stated, Kitko has done everything that it should have done under the applicable rules. Furthermore, Kitko has as much of a right as Munire to be protected by those rules. The rules allow a plaintiff in a civil action to take a judgment by default when an opposing party refuses to respond. Under the rules, that judgment becomes final and enforceable unless the opposing party can demonstrate a reason why it was not able to plead to the complaint in a timely manner. Munire has neither abided by the rules nor credibly explained why it was not able to timely plead to the Complaint. The rules are in place for a reason, so that the parties can rely on the same. Kitko has played by and relied on the rules. The same cannot be said for Munire. Therefore, Kitko's judgment in this matter should not be disturbed.

B. Munire's Argument That It Has A Meritorious Defense Based On Personal Jurisdiction Is Waived Under The Rules And, Therefore, Not An Issue In This Matter, But A diversionary Tactic

In its brief, Munire claims that it has a meritorious defense based on this Court's lack of personal jurisdiction.⁸ This defense, however, has been waived under the Pennsylvania Rules of Civil Procedure. Rule 1032 of the Pennsylvania Rules of Civil Procedure mandates that a defense based on personal jurisdiction is waived unless timely pleaded. Furthermore, preliminary objections are the only manner in which to raise a defense of personal jurisdiction. See Encelewski v. Associated-East Mortg. Co., 396 A.2d 717 (Pa.Super. 1978)(Preliminary objections are the exclusive method of raising the questions of jurisdiction, and the failure to raise the question of in personam jurisdiction constitutes waiver of that defense); citing Monaco v. Montgomery Cab Company, 417 Pa. 135, 208 A.2d 252 (1965) and Yentzer v. Taylor Wine Company, Inc., 409 Pa. 338, 186 A.2d 396 (1962). Here, Munire's counsel contacted Kitko's counsel arguably only three (3) days after receipt of the Complaint;⁹ that is, seventeen (17) days before the deadline to file preliminary objections would pass. As is admitted in its Petition to Open Default Judgment, it took Munire only eight (8) days to file its Petition after the default judgment issued. Accordingly, Munire could easily have contacted local counsel and filed preliminary objections based on personal jurisdiction within the seventeen (17) days that

⁸ Although Munire has made broad factual assertions with regard to its contacts with Pennsylvania in order to mount an attack on the jurisdiction of this Court, Kitko vigorously disagrees with the characterization of those contacts and believes that jurisdiction is abundantly proper in the underlying lawsuit. However, in an effort not to distract the Court from the true issues of this Petition, Kitko will not substantively argue why this Court, in fact, has jurisdiction over Munire in this Brief. If the Court, however, decides that jurisdiction is a relevant issue, Kitko would be more than willing to brief the same at length.

⁹ One of the certified mail return receipts is dated April 30, 2004 and Mr. Olender contacted the under signed on May 3, 2004.

remained.¹⁰ Rather, Munire agreed to an extension which was only offered under the condition that Munire could not file preliminary objections, but rather answer the Complaint. See Exhibit “B.” Thus, even though the personal jurisdiction defense was waived per Pa.R.C.P. 1032, the defense was also waived by virtue of Munire’s acceptance of the extension agreement. Consequently, the attempted resurrection of this waived defense lacks merit.

Furthermore, if Munire is, in fact, a foreign corporation with no contacts with the commonwealth of Pennsylvania, it will have a full and fair opportunity to argue the same when Kitko exports its judgment to New Jersey and attempts to execute. If, in fact, this Court lacks personal jurisdiction over Munire, then the judiciary in New Jersey can protect Munire just as well, if not better, than this Court given that Munire allegedly enjoys New Jersey citizenship. Munire missed its opportunity to object to this Court’s jurisdiction. Munire has, therefore, waived that defense in the underlying lawsuit in Pennsylvania. Accordingly, this Court has jurisdiction over Munire, and the judgment in favor of Kitko in the underlying lawsuit should not be disturbed.

C. Munire’s Petition Is Fraught With Inaccuracies And Should Be Disregarded Under The Rules

Munire’s averments in its Petition are at best misleading. At first glance, however, they may even seem to support an argument that relief should be granted. However, as is discussed at length in the two preceding sections, those averments, even if true, do not entitle Munire to relief. Regardless, if the Court disagrees, it still should disregard the averments. “All averments of fact responsive to the petition and properly pleaded in the answer shall be deemed admitted for the

¹⁰ Please also note that Munire has hung its hat on the fact that Mr. Olender is not licensed to practice in Pennsylvania. However, according to Martindale-Hubbe and Olender Feldman LLP’s website, Mr. Olender’s named partner, Michael Feldman, is licensed to practice in Pennsylvania. A true and correct copy of both are attached hereto as Exhibit “D.” Thus, this explanation rings hollow.

purpose of the rule.” Schultz at 94, citing Goodrich-Amram 2d, See also Pa.R.C.P. 206.7 governing petitions to open default judgments. Accordingly, the facts as recited by Munire, should be disregarded in favor of Kitko’s version of events when deciding whether to open the judgment. The Court should, therefore, decide this Petition pursuant to the facts as described by Kitko. i.e. that Munire does have significant and substantial contacts with Pennsylvania, allegations concerning Lajobe and Babies R Us are not related to this dispute, Munire’s counsel technically does practice in Pennsylvania, and Kitko delivered quality products to Munire that were not defective. Accordingly, the Court should deny Munire’s Petition and not disturb Kitko’s Judgment.

Nor is there any need for this Court to order or participate in any Pa.R.C.P. 206.7 discovery. Munire’s allegation that it did not answer the Complaint because it was negotiating with “two other necessary parties”¹¹ is a legal conclusion that does not give rise to a disputed issue of fact that requires resolution under Rule 206.7. See Cross v. 50th Ward Community Ambulance Co., 528 A.2d 1369 (Pa.Super.1987) (holding issue of “improper service” a conclusion of law that does not require resolution and that “improper service” is not a valid excuse to explain why defendant has failed to answer complaint); Pittsburgh v. Allegheny County Distributors, 339 Pa.Super. 109, 488 A.2d 333 (1985) (petition to open confessed judgment was dismissed as inadequate because it contained conclusion of law unsupported by factual allegations). Even if accepted as true, the fact that Munire may have been negotiating with Lajobe or Babies R Us, did not excuse Munire from responding to the Complaint. Therefore, there is no need for the Court to probe the truthfulness of such an assertion. See also

¹¹ Defendant’s Brief In Support Of Petition To Open Default Judgment at 2-3.

Schultz supra (deciding not to open default on Petition and Answer only, without further factual inquiry); DiNardo v. Central Penn Air Services, Inc., 358 Pa.Super. 1187, 516 A.2d 1187 (1986) (court could examine the facts as alleged in the petition, plaintiff's answer ineffectively denied the averments in petition to open, there were no factual disputes that would require a [Rule 209] investigation). Munire's proffered excuse fails as a matter of law, therefore, the Petition should be denied without further inquiry into any facts of the underlying lawsuit.

III. Conclusion

Munire has failed to meet its burden under the three prong standard set out in the Schultz case. Especially, Munire has given no reason that excuses its failure to respond to the Complaint for over one hundred (100+) days, except that it was involved in an unrelated dispute. If Munire's position is that Kitko was not entitled to payment under the contract for defects in the product, it should have defended this contract action on those grounds when it had the chance. Furthermore, Munire has waived any right that it may have had to object to the jurisdiction of this Court by waiving the right to file preliminary objections and by not responding to the Complaint in a timely manner. Kitko, followed the rules, while Munire has ignored the same. The judgment in favor of Kitko should, therefore, not be disturbed.

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

Dated: August 27, 2004

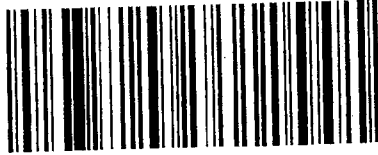
By: 

John A. Snyder
I.D. No. 66295
Russell A. Ventura
I.D. No. 83836
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

EXHIBIT A

2. Article Number



7160 3901 9842 6531 1884

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

MONIRE FURNITURE CO INC
55 WEBER ROAD
CLIFTON NJ 07012

KITNO.MONIRE.SAP

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

☐ Agent
☐ Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

PS Form 3811, January 2003

Domestic Return Receipt

2. Article Number



7160 3901 9842 6531 1891

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

MONIRE FURNITURE CO INC
160 PASSAIC AVENUE
BUILDING 113
KEARNY NJ 07032-1128

KITNO.MONIRE.SAP

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

☐ Agent
☐ Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

PS Form 3811, January 2003

Domestic Return Receipt

EXHIBIT B

MCQUAIDE BLASKO

ATTORNEYS AT LAW

811 University Drive, State College, Pennsylvania 16801-6699
Additional offices in Hershey and Hollidaysburg

(814) 238-4926 FAX (814) 234-5620
www.mcquaideblasko.com

May 4, 2004

Kurt Olender, Esquire
Olender Feldman
2840 Marrs Avenue
Union, NJ 07083
(Fax: 908-845-0362)

In re: Kitko Wood Products, Inc. v. Munire Furniture Co., Inc.
No. 2004-501-CD

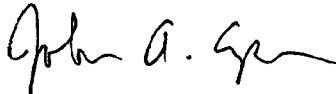
Dear Mr. Olender:

This letter will confirm our telephone conversation of May 3, 2004, wherein you requested an extension, or until May 31, 2004, for the filing and service of Defendant's Answer to Plaintiff's Complaint in the above-captioned matter. This extension is expressly limited to the filing of an Answer and we are not agreeable to an extension of time for the purposes of filing Preliminary Objections.

If you have any comments or questions concerning this matter, please feel free to contact me. Otherwise, we will look forward to receiving your Answer on or before May 31, 2004.

Very truly yours,

MCQUAIDE BLASKO

By: 
John A. Snyder

JAS/sap

cc: Robert F. Kitko, Sr.

MCQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

State College Office: John W. Blasko Thomas E. Schwartz R. Mark Faulkner David M. Weixel Steven S. Hurvitz James M. Horne Wendell V. Courtney Darryl R. Slinak Mark Righter Daniel E. Bright
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Hollidaysburg Office: Thomas M. Reese J. Benjamin Yenger

John G. Love (1893-1966) Roy Wilkinson, Jr. (1915-1995) Delbert J. McQuaide (1936-1997)

EXHIBIT C

John Snyder

From: John Snyder
Sent: Tuesday, July 13, 2004 4:17 PM
To: Kurt Olender
Subject: Kitko Wood Products Inc. v. Munire, No. O4-501-CD (Clearfield County)

Kurt,

I am writing to give you a heads-up that my client has instructed me to proceed with the litigation. You will soon be receiving a "10 day" notice in the mail. This is a prerequisite, under Pa. Rules, to filing for a default judgment. You will have 10 days within which to file an answer. My client firmly believes that, while your client may have experienced problems with his products, those problems were not the result of my client selling defective wood. He also remains desirous of inspecting the allegedly damaged products, and is disappointed that he has not been permitted to do so yet.

Please feel free to contact me if you have any comments or questions.

Sincerely,

John Snyder

John A. Snyder
McQuaide Blasko
811 University Drive
State College, PA 16801

jasnyder@mcquaideblasko.com

Phone (814) 238-4926
Fax (814) 238-9624

8/27/2004

EXHIBIT D

HOME
FIRM PROFILE
ATTORNEYS
CONTACT
DIRECTIONS

OLENDERFELDMAN LLP

Michael J. Feldman

Member

Email: mfeldman@olenderfeldman.com

Practice Areas: Intellectual Property Litigation; Intellectual Property Protection; Copyrights; Trademarks; Trade Secrets; Licensing; Contracts; Complex Commercial Litigation; Alternative Dispute Resolution; Corporate Law; Business Law; Business Arbitration; Business Development; Business Litigation; Business Transactions; Internet Law; E-Commerce Law; Commercial Mediation; Construction Litigation.

Admitted: 1996, Pennsylvania, New Jersey and U.S. District Court, District of New Jersey

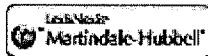
Law School: Cornell University, J.D., 1996.

College: Rutgers College, B.A., 1993.

Born: 1971.

ISLN: 910218328

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Michael J. Feldman

Member

OlenderFeldman LLP

2840 Morris Avenue

Union, New Jersey 07083

(Union Co.)

Telephone: 908-964-2486

Fax: 908-845-0362

<http://www.olenderfeldman.com>

Email: [Send an Email](#)

Practice Areas: Intellectual Property Litigation; Intellectual Property Protection; Copyrights; Trademarks; Trade Secrets; Licensing; Contracts; Complex Commercial Litigation; Alternative Dispute Resolution; Corporate Law; Business Law; Business Arbitration; Business Development; Business Litigation; Business Transactions; Internet Law; E-Commerce Law; Commercial Mediation; Construction Litigation

Admitted: 1996, Pennsylvania, New Jersey and U.S. District Court, District of New Jersey

Law School: Cornell University, J.D., 1996

College: Rutgers College, B.A., 1993

Born: 1971

ISLN: 910218328

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
	:	
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Brief in Support of its Answer and New Matter to Defendant's Petition to Open Default Judgment in the above-captioned matter was mailed by U.S. First Class Mail, postage prepaid, on this 27th day of August, 2004, to the attorneys/parties of record:

Timothy A. Schoonover, Esquire
Novak, Stover & Furst
122 East High Street
P.O. Box 209
Bellefonte, PA 16823-0209

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

John A. Snyder
I.D. No. 66295
Russell A. Ventura
I.D. No. 83836
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

KITKO WOOD PRODUCTS, INC.
vs
MUNIRE FURNITURE CO., INC.
No. 04-501-CD

8/9/04
Ammerman

8/9/04-Pet. to Open Dflt. Jdmt.-def.-WR-8-20-04 E-5-04

P-John A. Snyder, Esq., McQuaide Blasko
D-Timothy S. Schoonover, Esq., Stover, McGlaughlin,
Gerace, Weyandt & McCormick, 919 University Dr., ST.
Clkg. 16801 231-1850

*Shouldn't this be
scheduled?*

*The Thing That needs to be
scheduled (if not already) is The
Defend's Petition to open Judgment.
A hearing is not scheduled on an
Answer & New Matter. This is a
response to D's Petition*

Reed McCormick
Anthony J. Gerace, Jr.
Jeffrey W. Stover
Ronald S. McGlaughlin
Donald M. Hahn
Timothy A. Schoonover
Tonia M. Torquato
Of Counsel:
Charles J. Weyandt
Ben Novak

10-704-930
STOVER, McGLAUGHLIN, GERACE, WEYANDT & McCORMICK, P.C.
Attorneys & Counselors at Law

919 University Drive • State College, PA 16801 • (814) 231-1850 • Fax: (814) 231-1860
P.O. Box 209 • 122 East High Street • Bellefonte, PA 16823 • (814) 355-8235 • Fax: (814) 355-1304

Web: www.nittanylaw.com
Email: info@nittanylaw.com

Please Reply to:
State College Office

August 23, 2004

RECEIVED

AUG 24 2004

VIA FEDERAL EXPRESS

David S. Meholick
Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

COURT ADMINISTRATOR'S
OFFICE

Re: Kitko Wood Products, Inc. v. Munire Furniture Co., Inc.
No. 04-501-CD

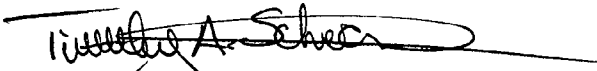
Dear Mr. Meholick:

Enclosed please find an original and one copy of Defendant's Brief in Support of Petition to Open Default Judgment for filing in the above-referenced matter.

Kindly return one time-stamped copy of the Brief to my office in the enclosed self-addressed, stamped envelope for my file.

Thank you for your assistance in this matter.

Very truly yours,


Timothy A. Schoonover

TAS:hem:082304L.Court
Enclosure: Original & 1 Brief
SASE
cc: John A. Snyder, Esq. (w/enclosure)
Munir Hussain (w/enclosure)
Kurt D. Olender, Esq. (w/enclosure)

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	No. 04-501-CD
Plaintiff,	:	
	:	Type of Pleading: Brief in Support of Petition
	:	to Open Default Judgment
v.	:	
	:	Type of Case: Civil
MUNIRE FURNITURE CO., INC.,	:	
	:	Filed on behalf of: Defendant
Defendant.	:	
	:	Counsel for Record of this Party:
	:	Timothy A. Schoonover, Esquire
	:	I.D. No. 76260
	:	Stover, McGlaughlin, Gerace, Weyandt &
	:	McCormick, P.C.
	:	919 University Drive
	:	State College, PA 16801
	:	Phone: (814) 231-1850
	:	Fax: (814) 231-1860

RECEIVED
AUG 24 2004
COURT ADMINISTRATOR'S
OFFICE

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 04-501-CD
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

**DEFENDANT'S BRIEF IN SUPPORT OF
PETITION TO OPEN DEFAULT JUDGMENT**

NOW COMES, the Defendant, Munire Furniture, Inc., by and through its attorneys, Stover, McGlaughlin, Gerace, Weyandt & McCormick, P.C., and files this Brief in support of its Petition to Open Default Judgment:

I. HISTORY

Kitko Wood Products, Inc. ("Kitko") is a business located in Clearfield County which produces raw lumber products for sale to customers for use in furniture making and other products. Munire Furniture, Inc. ("Munire") is a manufacturer of children's furniture located in Clifton, New Jersey. Munire purchases raw materials from various suppliers, such as Kitko. Munire then cuts, assembles and paints its final product, which is then shipped to distributors and/or retailers from its facility in New Jersey.

As is relevant to the within dispute, in September 2003, Munire began purchasing wood from Kitko for use in manufacturing children's furniture. Approximately six months into the

relationship with Kitko, one of Munire's finished product customers, Lajobi Industries, Inc., ("Lajobi") began experiencing quality problems with the finished goods. Specifically, the tops of various pieces of furniture in the joints were expanding and warping and painted pieces were experiencing cracking of the paint and paint adherence problems. According to Lajobi, the problem was that the wood that was used to construct the furniture contained too high a moisture content.

As a result of this problem, Lajobi failed and refused to pay Munire a total of approximately \$720,000.00 for furniture that had it had purchased. Munire in turn refused to pay Kitko approximately \$145,000.00 until the dispute with Lajobi was resolved. In turn, Babies-R-Us, the retailer of the finished product, refused to accept the furniture and demanded that the furniture be removed from its facility and that it be credited the costs thereof by Lajobi. Correspondingly, Lajobi made the same demand upon Munire.

On or about April 12, 2004, Kitko filed a Complaint in this matter alleging Breach of Contract, Unjust Enrichment and Promissory Estoppel, as a result of the \$145,000.00 not being paid. Upon receipt of the Complaint, Munire's General Counsel, Kurt D. Olender, of the law firm of Olender Feldman, L.L.P. located in Union, New Jersey, promptly contacted counsel for Kitko, John Snyder, Esquire, to discuss the background of the dispute between the parties and to advise Mr. Snyder that Munire had no contact with the Commonwealth of Pennsylvania. Attorney Olender requested that Attorney Snyder voluntarily dismiss this litigation, and refile in New Jersey, but Mr. Snyder refused to do so.

Over the course of the next several weeks Attorney Olender and Attorney Snyder entered into discussions regarding the status of the dispute with Lajobi. Attorney Snyder was informed by Attorney Olender that the dispute with Kitko also involved two other necessary parties, Lajobi and

Babies-R-Us and that it would be necessary to determine how the dispute with these parties would be resolved before further action was taken in the Kitko matter. Attorney Snyder was further informed that his client could have the opportunity to inspect the defective furniture, but Kitko did not avail itself of this opportunity.

Instead, on or about July 14, 2004, Attorney Snyder forwarded a 10 Day Default Notice to Munire and Attorney Olender. Attorney Olender promptly contacted Attorney Snyder to notify him that he had been unsuccessful in his attempts to secure local counsel and requested that Attorney Snyder delay filing for the Default Judgment for an additional 10 day period. Attorney Snyder indicated that his client would not authorize him to grant this additional extension.

On July 28, 2004, Attorney Snyder filed a Praecipe for Default Judgment thereby entering judgment in favor of the Kitko in the amount of \$147,243.69. The undersigned counsel was contacted for the first time regarding this matter on Friday, July 30, 2004 by Attorney Olender after he received the Praecipe for Default Judgment, and was retained on Tuesday, August 3, 2004. On August 5, 2004, Munire's Petition to Open Default Judgment was filed. It is this Petition which is presently before this Court for disposition.

II. DISCUSSION

Pa. R.C.P. 237.3 governs petitions to open default judgments. The Pennsylvania Supreme Court has set forth a three-prong test to be used by a trial court in considering whether to grant a petition to open a default judgment. *Schultz v. Erie Insurance Exchange*, 505 Pa. 90, 477 A.2d 471 (1984). A party seeking to open a default judgment must show: (1) the petition has been promptly filed; (2) a meritorious defense exists; and (3) the failure to appear is able to be excused. *Id.* at 472.

Rule 237.3 requires that the petition have attached to it a verified complaint or answer, which is proposed to be filed. Munire has attached verified Preliminary Objections which it proposes to file should this Petition be granted. While Rule 237.3 calls for the filing of a complaint or answer, the comments to the Rule specifically demonstrate that it is appropriate to attach proposed Preliminary Objections in lieu of an answer. In the event proposed Preliminary Objections are filed, a petition is to be analyzed under the three prong test set forth in the *Schultz* decision: (i) that there be no undue delay in responding to the Default Judgment; (ii) that the party seeking to open the Default Judgment has a meritorious defense; and (iii) that the defaulting party has a reasonable explanation for failing to have otherwise timely appeared.

There is no question that Munire's Petition was promptly filed. The Default Judgment was entered on July 28, 2004. The undersigned counsel was first contacted on July 30, 2004, immediately after Attorney Olender received the Default Judgment, retained on August 3, 2004, and the Petition was filed on August 5, 2004, eight days after the entry of the judgment.

Regarding the second element, a meritorious defense does exist. Munire is a New Jersey corporation. Munire does not maintain any place of business outside of the state of New Jersey and has no physical or other presence in any other state aside from selling to customers that have locations in other states. Munire does not have any customers in the Commonwealth of Pennsylvania and at no time had any substantive contact with Kitko in the Commonwealth of Pennsylvania. More to the point, and as further set forth below, Munire has incurred damages of several hundred thousand dollars as a result of the failure of Kitko to supply conforming raw materials, not only in defense of Kitko's claim for payment, but in the form of a claim against Kitko.

Munire entered into a supply relationship with Kitko beginning in 2003. Under the arrangement between Munire and Kitko, Kitko was to supply wood that was suitable for processing and assembly into finished furniture products. In connection with initiating this relationship, Munir Hussain, President of Munire Furniture, made approximately 2-3 initial trips to Kitko's facility to introduce himself and to look at their facility. Other than those few trips at the beginning of the relationship, Mr. Hussain has had no other contact with Kitko in Pennsylvania and Munire has had no other presence in Pennsylvania.

Kitko and Munire did not have a formal written agreement, instead there was an understanding as to the duration of the relationship and the types of materials that Munire would require. Thereafter, Munire would issue purchase orders to Kitko from New Jersey, specifying the type and quantity of wood that was required, and Kitko would respond by shipping the materials to the Munire facility in New Jersey. Munire would then process the materials and assemble the furniture which would thereafter be shipped to Munire's customer, which, in the case of Kitko supplied wood products, was solely to Lajobi.

The parties' relationship lasted only eight months. Munire placed approximately 20 orders with Kitko, all of which originated from New Jersey and were shipped by Kitko to New Jersey. All of the materials purchased from Kitko were used to assemble furniture that was sold to Lajobi, a New Jersey based distributor, which then sold the finished goods to its customer, Babies-R-Us, also located in New Jersey. Lajobi has failed and refused to pay Munire several hundred thousand dollars, solely as a result of the failure of the materials supplied by Kitko to be suitable for the manufacturing of furniture. Thus, not only are all of the necessary parties located in New Jersey, but the transactions which are the subject of the dispute also occurred solely within New Jersey.

Based upon these facts, it is clear that a meritorious defense exists to the jurisdiction of this Court over Munire, which requires further action by this Court.

Lastly, as to the third *Schultz* prong, Munire's Petition sets forth a reasonable explanation for Munire's failure to enter an appearance in this matter. We do not have a situation in this instance where a defendant failed to communicate with a plaintiff, thereby leading the plaintiff to understand that the defendant had no intentions of defending against the complaint.

Attorney Olender promptly contacted Attorney Snyder after service of the Complaint. Attorney Olender shared with Attorney Snyder that the fact that all other parties, which are a necessary part of this dispute (Lajobi and Babies-R-Us), were located in New Jersey, thereby requiring an action to be filed in New Jersey. In order to avoid actions being filed in both Pennsylvania and New Jersey, Attorney Olender requested this action be withdrawn and refiled in New Jersey. Kitko refused to do so.

Kitko and Attorney Snyder were well aware that Munire intended from the very beginning on defending this action. It was Munire's hopes to avoid having to retain Pennsylvania counsel, which was required due to the fact that Attorney Olender is not licensed to practice law in Pennsylvania. Due to the previous cooperation and dialogue between Attorney Snyder and Attorney Olender, Attorney Olender had a reasonable belief that Attorney Snyder would grant his 10 day extension request once the 10 Day Default Notice was received. Unfortunately, Kitko refused to allow Attorney Snyder to grant the requested extension and required Attorney Snyder to enter the default judgment.

Upon having his extension request denied, Attorney Olender promptly moved forward to contact Pennsylvania counsel, which Munire promptly retained. At the time the default judgment

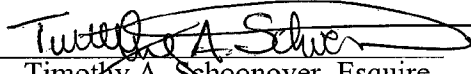
was entered, Kitko and Attorney Snyder were aware that Munire had not yet retained Pennsylvania counsel and were in the process of doing so.

III. CONCLUSION

Kitko will suffer no prejudice by the opening of the default judgment entered in its favor. It was aware of Munire's intentions to defend in this matter and that Munire had not yet retained Pennsylvania counsel at the time it moved forward to enter judgment. While Munire did not appear of record in this matter prior to the filing of this Petition, Munire had been actively involved with discussions with Kitko's counsel for several months prior to the entry of the judgment. Munire should not be punished for the fact that it attempted to amicably resolve this matter through its New Jersey counsel to avoid the expense of hiring Pennsylvania counsel. A review of Munire's Petition evidences that it sets forth facts establishing: (1) the Petition was promptly filed; (2) a meritorious defense exists; and (3) the failure to appear is excusable. Accordingly, Munire's Petition should be granted.

Respectfully submitted,

STOVER, MCGLAUGHLIN, GERACE,
WEYANDT & MCCORMICK, P.C

By: 
Timothy A. Schoonover, Esquire
Attorney for Defendant
919 University Dr.
State College, PA 16801
(814) 231-1850

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant's Brief in Support of Petition to Open Default Judgment has been served this 23rd day of August 2004 upon the following individual by First Class U.S. Mail, Postage Prepaid, at the following address:

John A. Snyder
McQuaide, Blasko, Schwartz,
Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

STOVER, MCGLAUGHLIN, GERACE,
WEYANDT & MCCORMICK, P.C

By: Timothy A. Schoonover
Timothy A. Schoonover

Date: 09/30/2004

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 09:41 AM

ROA Report

Page 1 of 1

Case: 2004-00501-CD

Current Judge: Fredric Joseph Ammerman

Kitko Wood Products, Inc. vs. Munire Furniture Co., Inc.

Civil Other

Date		Judge
04/12/2004	Filing: Civil Complaint Paid by: Snyder, John A. (attorney for Kitko Wood Products, Inc.) Receipt number: 1877083 Dated: 04/12/2004 Amount: \$85.00 (Check) 2 CC to Atty. Snyder.	No Judge ✓
04/15/2004	Certificate of Service, Plaintiff Kitko Wood Products, Inc's Complaint upon Munire Furniture Co., Inc. (two differed addresses) filed by, s/John A. Snyder, Esq. no cc	No Judge ✓
05/07/2004	Certified Mail Receipts, Kitko Wood Products, Inc.'s Complaint upon: Munire Furniture Co., Inc. (2 locations). filed by, s/John A. Snyder, Esq. no cc	No Judge 2 ✓
07/15/2004	Notice of Intent, filed by Atty. Blasko Ten Day Notice to Defendants.	No Judge ✓
07/28/2004	Filing: Judgment Paid by: McQuaide Blasko Receipt number: 1883516 Dated: 07/28/2004 Amount: \$20.00 (Check) Judgment entered against the Defendant in the amount of \$147,243.69 Notice to Defendant Statement to Atty.	No Judge ✓
08/05/2004	Petition to Open Default Judgment, filed by s/Timothy A. Schoonover, Esq. One CC Attorney Schoonover	No Judge ✓
08/09/2004	Rule to Show Cause, Now this 9 day fo August, 2004, Rule issued why Petition should not be granted. Rule returnable the 30 day of August, 2004 for filing written response. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorney Schoonover	Fredric Joseph Ammerman ✓
08/25/2004	Answer and New Matter to Defendant's Petition to Open Default Judgment, filed by s/John A. Snyder No CC	Fredric Joseph Ammerman ✓
08/31/2004	Order, AND NOW, this 31st day of August, 2004, it is the Order of the Court that argument on defendant's Petition to Open Default judgment in the above captioned matter has been scheduled for Friday, September 24, 2004 at 2:00 P.M. in Courtroom No. 1, Clfd Co. Courthouse. BY THE COURT: Fredric J. Ammerman, President Judge. 1CC Attys. Snyder, Schoonover.	Fredric Joseph Ammerman ✓
09/09/2004	Defendant's Answer to Plaintiff's New Matter, Certificate of Service upon John A. Snyder, filed by s/Timothy A. Schoonover, Esquire. No CC.	Fredric Joseph Ammerman ✓
09/15/2004	Order AND NOW, this 15th day of Sept, 2004, it is the Order of the Court that argument on Def. Petition to Open Default Judgment in the above captioned matter has been rescheduled from Sept. 24, 2004 to Oct. 7, 2004. S/FJA 1 CC to Attys Snyder, Schoonover	Fredric Joseph Ammerman ✓

the defendants would cease paying the dividends due under the Operating Lease to the Clearfield & Mahoning's minority shareholders; the market value of those shares would markedly decrease as a consequence, and those events would cause plaintiffs and the other members of the Class to sell their C&M shares for substantially less than what their value should have been and, also and in any event, for substantially less than the value of the consideration paid or the profit which Mr. Corman and/or the Corman Companies gained and/or will gain by reason of their acquisition of their control of the Clearfield & Mahoning.

13. In an effort to document and confirm the validity of the foregoing averments, plaintiffs' counsel addressed a letter to the defendant Mr. Corman on August 8, 1997, a copy of which is Exhibit "G" to this Complaint, to which counsel's only response was a letter from the Clearfield & Mahoning of September 19, 1997, a copy of which is Exhibit "H" to this Complaint.

14. In fact and in law, plaintiffs believe and therefore aver, the efforts of the BR&P and CSX to abrogate their duties to guarantee the payment of future dividends on the C&M stock were ineffective to destroy the independent obligations of the BR&P and CSX to the minority shareholders of the C&M because:

- a. The BR&P remains directly liable to the C&M shareholders under the specific terms of the stock certificates issued to plaintiff and other members of the plaintiff Class, and
- b. Mr. Corman, as the controlling stockholder of the C&M, was barred by reason of his conflicting interests, from

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

KITKO WOOD PRODUCTS, INC., :
 :
 :
 Plaintiff, : No. 04-501-CD
 : -2004-C.D.
 :
 :
 v. :
 :
 :
 :
 MUNIRE FURNITURE CO., INC., :
 :
 :
 :
 Defendant. :

NOTICE TO DEFEND

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

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

*David S. Meholick, Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641, ext. 5982*

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

Dated: April 8, 2004

By: John A. Snyder

John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

FILED

APR 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. _____-2004-C.D.
	:	
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

COMPLAINT

AND NOW, comes the Plaintiff, Kitko Wood Products, Inc., by and through its undersigned attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc. and files the following Complaint and in support thereof avers as follows:

1. Plaintiff is Kitko Wood Products, Inc., a business corporation with a principal location in Glen Hope, Clearfield County, Pennsylvania.
2. Defendant is Munire Furniture Co., Inc., a business corporation with business offices in *inter alia*, Kearny, New Jersey and Clifton, New Jersey.
3. Upon information and belief, Defendant regularly conducts and transacts business in the Commonwealth of Pennsylvania including, but not limited to, the business transactions giving rise to the instant action.
4. Plaintiff is in the business of manufacturing and selling finished wood products and finished components for use in later assembled finished wood products.
5. Defendant has over time purchased certain finished panels and wood products from Plaintiff.

6. In the course of contracting with Plaintiff, Defendant has frequently sent its President, Munir Hussain, to the Glen Hope facility to inspect and select the products to be purchased.

7. Mr. Hussain has traveled to Clearfield approximately 25 times over the course of the parties' business relationship.

8. Defendant has also issued offers to Plaintiff's Clearfield County facility via facsimile machine.

9. Plaintiff has accepted those offers in Clearfield County.

10. Furthermore, Defendant's payments, when they were being timely made, were made to Plaintiff in Clearfield County.

11. Beginning in late 2003, Defendant became substantially in arrears with respect to the payments owed to Plaintiff resulting from the products purchased from Plaintiff.

12. Plaintiff's sales terms, which have been agreed to by Defendant, are that invoices are due within 30 days and, if not paid, interest accrues at the rate of 1.5% per month.

13. As of April, 2004, Defendant was in arrears, and owed to Plaintiff the amount of \$147,243.69 as set forth on the invoices attached hereto as Exhibit A.

14. Plaintiff has satisfied all contractual terms entitling it to payment.

15. Plaintiff has made demand of Defendant, which demand has been refused.

16. In the alternative, and to the extent a legally enforceable contract is not found to be in place between the parties, Defendant has obtained property and services from Plaintiff under circumstances where common sense and justice dictate that payment should be made.

17. Defendant has been unjustly enriched at the expense of Plaintiff, and claim is made therefore.

18. Also, in the alternative, and to the extent a legally enforceable contractual claim is not found to exist, Plaintiff reasonably relied upon Defendant's promises to timely pay invoice costs and finance charges, and Plaintiff's reliance on Defendant's promises are justifiable and reasonable under the circumstances such that Plaintiff is entitled to recover under the doctrine of promissory estoppel and/or detrimental reliance.

COUNT I
Breach of Contract

19. Plaintiff incorporates herein by reference the same as though set forth at length, paragraphs 1 through 18, inclusive.

20. Based on the foregoing, Defendant has materially and substantially breached its contract with Plaintiff and Plaintiff is legally entitled to damages arising therefrom.

WHEREFORE, Plaintiff requests that this Court enter judgment in its favor, and against Defendant, and award Plaintiff the amount of \$147,243.69 in compensatory damages, plus pre- and post-judgment interest as warranted by the facts and the law, together with costs of this suit and such other relief as this Court may deem just and equitable.

COUNT II
Unjust Enrichment

21. Plaintiff incorporates herein by reference the same as though set forth at length, paragraphs 1 through 20, inclusive.

22. Plaintiff is entitled to recover damages from Defendant based upon the theory of unjust enrichment, and claim is made therefore.

WHEREFORE, Plaintiff requests that this Court enter judgment in its favor, and against Defendant, and award Plaintiff the amount of \$147,243.69 in compensatory damages, plus pre-

and post-judgment interest as warranted by the facts and the law, together with costs of this suit and such other relief as this Court may deem just and equitable.

COUNT III
Promissory Estoppel

23. Plaintiff incorporates herein by reference the same as though set forth at length, paragraphs 1 through 22, inclusive.

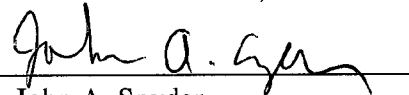
24. Plaintiff is entitled to recover from Defendant based upon the theory of promissory estoppel, and claim is made therefore.

WHEREFORE, Plaintiff requests that this Court enter judgment in its favor, and against Defendant, and award Plaintiff the amount of \$147,243.69 in compensatory damages, plus pre- and post-judgment interest as warranted by the facts and the law, together with costs of this suit and such other relief as this Court may deem just and equitable.

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

Dated: April 8, 2004

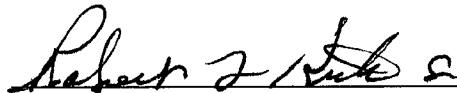
By: 

John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

VERIFICATION

The undersigned verifies that he is authorized to make this Verification on his own behalf and on behalf of Kitko Wood Products, Inc., and that the statements made in the foregoing Complaint are true and correct to the best of his knowledge, information and belief. The undersigned understands that false statements herein are subject to the penalties of 18 Pa. C.S.A. § 4904, related to unsworn falsification to authority.



ROBERT F. KITKO, SR.

Dated: 4/2/09

EXHIBIT A

Kitko Wood Products, Inc.

Invoice

P.O. Box 3
Glen Hope, PA 16645
PHONE# 814-672-3606
FAX# 814-672-3076

DATE	INVOICE #
12/2/2003	20235

BILL TO
MUNIRE FURNITURE CO., INC. 160 PASSAIC AVE. BLDG. 113 KEARNY, NJ 07032-1128

SHIP TO
MUNIRE FURNITURE CO. 55 WEBRO RD. CLIFTON, NJ 07012

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.	DELIVERY RECEIPT
AS LISTED	AS DISCUSSED	RFK	12/1/2003	BUTLER TR...	OUR PLANT	29860, 29861, 29862, 2...
QUANTITY	ITEM CODE	DESCRIPTION			PRICE EACH	AMOUNT
		PO# 11/10/03				
175	2036.78-HMP	20 X 36 X 25/32 H. MAPLE PANEL			15.00	2,625.00
687	930.78-HMP	9 X 30 X 25/32 H. MAPLE PANEL			5.63	3,867.81
344	2050.78-HMP	20 X 50 X 25/32 H. MAPLE PANEL			20.83	7,165.52
359	12.2524.25.78-H...	12 1/4 X 24 1/4 X 25/32 H. MAPLE PANEL			6.19	2,222.21
364	17.7517.25.78-H...	17 3/4 X 17 1/4 X 25/32 H. MAPLE PANEL			6.38	2,322.32
352	812.25.78-HMP	8 X 12 1/4 X 25/32 H. MAPLE PANEL			2.04	718.08
1,064	830.5.78-HMP	8 X 30 1/2 X 25/32 H. MAPLE PANEL			5.08	5,405.12
		PO# 11/21/03				
111	928.78-HMP	9 X 28 X 25/32 H. MAPLE PANEL			5.25	582.75
392	932.78-HMP	9 X 32 X 25/32 H. MAPLE PANEL			6.00	2,352.00
260	1643.78-HMP	16 X 43 X 25/32 H. MAPLE PANEL			14.33	3,725.80
		PO# 11/06/03				
236	1643.78-HMP	16 X 43 X 25/32 H. MAPLE PANEL			14.33	3,381.88
161	1817.78-HMP	18 X 17 X 25/32 H. MAPLE PANEL			6.38	1,027.18
275	812.25.78-HMP	8 X 12 1/4 X 25/32 H. MAPLE PANEL			2.04	561.00
		PO# 1562				
2,079	ISABELLA FEET	3 3/8 X 4 BUNN FOOT / HANGERBOLT			2.25	4,677.75

Thank you for your business.

Total \$40,634.42

Kitko Wood Products, Inc,

P.O. Box 3
Glen Hope, PA 16645
PHONE# 814-672-3606
FAX# 814-672-3076

Invoice

DATE	INVOICE #
12/5/2003	20248

BILL TO
MUNIRE FURNITURE CO., INC.
160 PASSAIC AVE. BLDG. 113
KEARNY, NJ 07032-1128

SHIP TO
MUNIRE FURNITURE CO.
55 WEBRO RD.
CLIFTON, NJ 07012

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.	DELIVERY RECEIPT
1001	AS DISCUSSED	RFK	12/3/2003	CCX	OUR PLANT	29908

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
588	CARLISLE FEET	3 1/4 X 4 3/4 S. MAPLE BUN FEET	2.50	1,470.00
1	FREIGHT	FREIGHT	116.07	116.07
CCX PRO# 255-851256 1 SKID - 500 #				

Thank you for your business.

Total \$1,586.07

Kitko Wood Products, Inc,

P.O. Box 3
Glen Hope, PA 16645
PHONE# 814-672-3606
FAX# 814-672-3076

Invoice

DATE	INVOICE #
12/5/2003	20263

BILL TO

MUNIRE FURNITURE CO., INC.
160 PASSAIC AVE. BLDG. 113
KEARNY, NJ 07032-1128

SHIP TO

MUNIRE FURNITURE CO.
55 WEBRO RD.
CLIFTON, NJ 07012

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.	DELIVERY RECEIPT
AS LISTED	AS DISCUSSED	RFK	12/5/2003	CCX	OUR PLANT	29423

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
607	CARLISLE FEET	PO# 1001 3 1/4 X 4 3/4 S. MAPLE BUN FEET/HANGERBOLT	2.50	1,517.50
796	ISABELLA FEET	PO# 1562 3 3/8 X 4 POPLAR BUNN FEET/HANGERBOLT	2.25	1,791.00
1	FREIGHT	FREIGHT	167.58	167.58
		CCX PRO# 255-851396		

Thank you for your business.

Total

\$3,476.08

Kitko Wood Products, Inc,

Invoice

P.O. Box 3
Glen Hope, PA 16645
PHONE# 814-672-3606
FAX# 814-672-3076

DATE	INVOICE #
12/10/2003	20281

BILL TO
MUNIRE FURNITURE CO., INC. 160 PASSAIC AVE. BLDG. 113 KEARNY, NJ 07032-1128

SHIP TO
MUNIRE FURNITURE CO. 55 WEBRO RD. CLIFTON, NJ 07012

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.	DELIVERY RECEIPT
1501	AS DISCUSSED	RFK	12/10/2003	BUTLER TR...	OUR PLANT	29427

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
225	832.5.78-HMP	8 X 32 1/2 X 25/32 H. MAPLE PANEL	5.42	1,219.50
161	12.2521.75.78-H...	12 1/4 X 21 3/4 X 25/32 H. MAPLE PANEL	5.55	893.55
322	925.78-HMP	9 X 25 X 25/32 H. MAPLE PANEL	4.69	1,510.18
78	931.78-HMP	9 X 31 X 25/32 H. MAPLE PANEL	5.81	453.18
407	930.78-HMP	9 X 30 X 25/32 H. MAPLE PANEL	5.63	2,291.41
9	932.78-HMP	9 X 32 X 25/32 H. MAPLE PANEL	6.00	54.00
66	2164.25.78-HMP	21 X 64 1/4 X 25/32 H. MAPLE PANEL	28.11	1,855.26
75	12.2526.75.78-H...	12 1/4 X 26 3/4 X 25/32 H. MAPLE PANEL	6.83	512.25
25	2137.25.78-HMP	21 X 37 1/4 X 25/32 H. MAPLE PANEL	16.30	407.50
10 SKIDS				

Thank you for your business.

Total \$9,196.83

Kitko Wood Products, Inc,

P.O. Box 3
Glen Hope, PA 16645
PHONE# 814-672-3606
FAX# 814-672-3076

Invoice

DATE	INVOICE #
12/19/2003	20328

BILL TO

MUNIRE FURNITURE CO., INC.
160 PASSAIC AVE. BLDG. 113
KEARNY, NJ 07032-1128

SHIP TO

MUNIRE FURNITURE CO.
55 WEBRO RD.
CLIFTON, NJ 07012

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.	DELIVERY RECEIPT
1001	AS DISCUSSED	RFK	12/17/2003	CCX	OUR PLANT	29431

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
837	CARLISLE FEET	3 1/4 X 4 3/4 S. MAPLE BUN FEET/HANGERBOLT	2.50	2,092.50
1	FREIGHT	FREIGHT	131.67	131.67

CCX PRO# 255-841935

Thank you for your business.

Total

\$2,224.17

Kitko Wood Products, Inc,

Invoice

P.O. Box 3
Glen Hope, PA 16645
PHONE# 814-672-3606
FAX# 814-672-3076

DATE	INVOICE #
12/19/2003	20329

BILL TO

MUNIRE FURNITURE CO., INC.
160 PASSAIC AVE. BLDG. 113
KEARNY, NJ 07032-1128

SHIP TO

MUNIRE FURNITURE CO.
55 WEBRO RD.
CLIFTON, NJ 07012

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.	DELIVERY RECEIPT
1001	AS DISCUSSED	RFK	12/18/2003	CCX	OUR PLANT	29432

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
474	CARLISLE FEET	3 1/4 X 4 3/4 S. MAPLE BUN FEET/HANGERBOLT	2.50	1,185.00
1	FREIGHT	FREIGHT CCX PRO# 255-861701	115.96	115.96

Thank you for your business.

Total

\$1,300.96

Kitko Wood Products, Inc,

Invoice

P.O. Box 3
Glen Hope, PA 16645
PHONE# 814-672-3606
FAX# 814-672-3076

DATE	INVOICE #
12/19/2003	20330

BILL TO
MUNIRE FURNITURE CO., INC. 160 PASSAIC AVE. BLDG. 113 KEARNY, NJ 07032-1128

SHIP TO
MUNIRE FURNITURE CO. 55 WEBRO RD. CLIFTON, NJ 07012

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.	DELIVERY RECEIPT
1001	AS DISCUSSED	RFK	12/19/2003	CCX	OUR PLANT	29434

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
1,344	CARLISLE FEET	3 1/4 X 4 3/4 S. MAPLE BUN FEET/HANGERBOLT	2.50	3,360.00
1	FREIGHT	FREIGHT CCX PRO# 255-872772	167.42	167.42

Thank you for your business.

Total

\$3,527.42

Kitko Wood Products, Inc.

P.O. Box 3
Glen Hope, PA 16645
PHONE# 814-672-3606
FAX# 814-672-3076

Invoice

DATE	INVOICE #
1/3/2004	20384

BILL TO
MUNIRE FURNITURE CO., INC. 160 PASSAIC AVE. BLDG: 113 KEARNY, NJ 07032-1128

SHIP TO
MUNIRE FURNITURE CO. 55 WEBRO RD. CLIFTON, NJ 07012

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.	DELIVERY RECEIPT
12/15/03	AS DISCUSSED	RFK	1/3/2004	OUR TRUCK	OUR PLANT	29779, 29778

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
		PO# 12/15/03 - GOOD COLOR		
120	2036.78-HMP	20 X 36 X 25/32 H. MAPLE PANEL	15.00	1,800.00
130	2050.78-HMP	20 X 50 X 25/32 H. MAPLE PANEL	20.83	2,707.90
240	930.78-HMP	9 X 30 X 25/32 H. MAPLE PANEL	5.63	1,351.20
		PO# 12/15/03 UNSELECTED		
700	7.2512.5.78-MP	7 1/4 X 12 1/2 X 25/32 MAPLE PANEL	1.51	1,057.00
607	5.512.25.78-MP	5 1/2 X 12 1/4 X 25/32 MAPLE PANEL	1.12	679.84
252	8.530.78-MP	8 1/2 X 30 X 25/32 MAPLE PANEL	4.25	1,071.00
288	1531.5.78-MP	15 X 31 1/2 X 25/32 MAPLE PANEL	7.88	2,269.44
587	16.2517.25.78-MP	16 1/4 X 17 1/4 X 25/32 MAPLE PANEL	4.67	2,741.29
479	12.2517.75.78-MP	12 1/4 X 17 3/4 X 25/32 MAPLE PANEL	3.62	1,733.98
249	2035.78-MP	20 X 35 X 25/32 MAPLE PANEL	11.67	2,905.83
532	5.532.78-MP	5 1/2 X 32 X 25/32 MAPLE PANEL	2.93	1,558.76
1,115	8.532.78-MP	8 1/2 X 32 X 25/32 MAPLE PANEL	4.53	5,050.95
617	2050.78-MP	20 X 50 X 25/32 MAPLE PANEL	16.67	10,285.39

Thank you for your business.

Total

\$35,212.58

Kitko Wood Products, Inc.

P.O. Box 3
Glen Hope, PA 16645
PHONE# 814-672-3606
FAX# 814-672-3076

Invoice

DATE	INVOICE #
1/7/2004	20408

BILL TO

MUNIRE FURNITURE CO., INC.
160 PASSAIC AVE. BLDG. 113
KEARNY, NJ 07032-1128

SHIP TO

MUNIRE FURNITURE CO.
55 WEBRO RD.
CLIFTON, NJ 07012

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.	DELIVERY RECEIPT
AS LISTED	AS DISCUSSED	RFK	1/7/2004	C.H. ROBINS...	OUR PLANT	29439

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
		PO# 12/15/03 GOOD COLOR		
205	2036.78-HMP	20 X 36 X 25/32 H. MAPLE PANEL	15.00	3,075.00
1,014	930.78-HMP	9 X 30 X 25/32 H. MAPLE PANEL	5.63	5,708.82
515	2050.78-HMP	20 X 50 X 25/32 H. MAPLE PANEL	20.83	10,727.45
629	12.2524.25.78-H...	12 1/4 X 24 1/4 X 25/32 H. MAPLE PANEL	6.19	3,893.51
635	17.7517.25.78-H...	17 3/4 X 17 1/4 X 25/32 H. MAPLE PANEL	6.38	4,051.30
628	812.25.78-HMP	8 X 12 1/4 X 25/32 H. MAPLE PANEL	2.04	1,281.12
1,974	830.5.78-HMP	8 X 30 1/2 X 25/32 H. MAPLE PANEL	5.08	10,027.92
		PO# 1002		
2,016	CARLISLE FEET	3 1/4 X 4 3/4 S. MAPLE BUN FEET/HANGERBOLT	2.50	5,040.00
		25 SKIDS - 41,000#		

Thank you for your business.

Total

\$43,805.12

Kitko Wood Products, Inc,

P.O. Box 3

Glen Hope, PA 16645

PHONE# 814-672-3606

FAX# 814-672-3076

Statement

DATE

4/22/2004

TO:

MUNIRE FURNITURE CO., INC.

160 PASSAIC AVE. BLDG. 113

KEARNY, NJ 07032-1128

AMOUNT DUE

AMOUNT ENC.

\$147,243.69

DATE	TRANSACTION			AMOUNT	BALANCE
11/30/2003	Balance forward				72,814.42
12/02/2003	INV #20235			40,634.42	113,448.84
12/05/2003	INV #20248			1,586.07	115,034.91
12/05/2003	INV #20263			3,476.08	118,510.99
12/10/2003	INV #20281			9,196.83	127,707.82
12/10/2003	PMT			-47,203.43	80,504.39
12/19/2003	INV #20328			2,224.17	82,728.56
12/19/2003	INV #20329			1,300.96	84,029.52
12/19/2003	INV #20330			3,527.42	87,556.94
01/03/2004	INV #20384			35,212.58	122,769.52
01/07/2004	INV #20408			43,805.12	166,574.64
01/09/2004	PMT			-25,610.99	140,963.65
03/22/2004	INV #FC 95 - Finance Charge			6,280.04	147,243.69
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
0.00	0.00	6,280.04	0.00	140,963.65	\$147,243.69

P.O. Box 3
Glen Hope, PA 16645
PHONE# 814-672-3606
FAX# 814-672-3076

DATE	INVOICE #
3/22/2004	FC 95

TERMS

[illegible]

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

KITKO WOOD PRODUCTS, INC.,

Plaintiff,

v.

MUNIRE FURNITURE CO., INC.,

Defendant.

:
:
: No. 04-501-CD
:
: Type of Pleading:
: **Certificate of Service**
:
:
: Type of Case: **Civil**
:
:
: Filed on behalf of: **Plaintiff**
:
:
: Counsel of Record for this Party:
: John A. Snyder
: I.D. No. 66295
: McQuaide, Blasko, Schwartz,
: Fleming & Faulkner, Inc.
: 811 University Drive
: State College, PA 16801
: Phone: (814) 238-4926
: Fax: (814) 238-9624

FILED

APR 15 2004

William A. Shaw
Prothonotary, Clerk of Courts

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
	:	
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

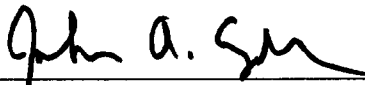
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff Kitko Wood Products, Inc.'s Complaint in the above-captioned matter was mailed by U.S. First Class Mail, Certified Mail (return receipt requested), postage prepaid, on this 13 day of April, 2004, to the attorneys/parties of record:

Munire Furniture Co., Inc.
55 Webro Road
Clifton, New Jersey 07012

Munire Furniture Co., Inc.
160 Passaic Avenue, Building 113
Kearny, New Jersey 07032-1128

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

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

KITKO WOOD PRODUCTS, INC.,

Plaintiff,

v.

MUNIRE FURNITURE CO., INC.,

Defendant.

:
: No. 04-501-CD
:
: Type of Pleading:
: **Certified Mail Return Receipts**
: **evidencing service of Plaintiff Kitko**
: **Wood Products, Inc.'s Complaint**
:
: Type of Case: **Civil**
:
: Filed on behalf of: **Plaintiff**
:
:
: Counsel of Record for this Party:
: John A. Snyder
: I.D. No. 66295
: McQuaide, Blasko, Schwartz,
: Fleming & Faulkner, Inc.
: 811 University Drive
: State College, PA 16801
: Phone: (814) 238-4926
: Fax: (814) 238-9624

FILED

MAY 07 2004

William A. Shaw
Prothonotary/Clerk of Courts

2. Article Number



7160 3901 9842 6531 1884

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

MUNIRE FURNITURE CO INC
55 WEBRO ROAD
CLIFTON NJ 07012

KITKO.MUNIRE.SAP

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

☐ Agent
☐ Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

PS Form 3811, January 2003

Domestic Return Receipt

2. Article Number



7160 3901 9842 6531 1891

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

MUNIRE FURNITURE CO INC
160 PASSAIC AVENUE
BUILDING 113
KEARNY NJ 07032-1128

KITKO.MUNIRE.SAP

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

☐ Agent
☐ Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

PS Form 3811, January 2003

Domestic Return Receipt

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address and ZIP+4 below •



MCQUAIDE BLASKO
811 UNIVERSITY DR
STATE COLLEGE PA 16801-6609

RECEIVED
APR 21 2004
MCQUAIDE BLASKO

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address and ZIP+4 below •



MCQUAIDE BLASKO
811 UNIVERSITY DR
STATE COLLEGE PA 16801-6609

MAY - 5 2004
MCQUAIDE BLASKO

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
	:	
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

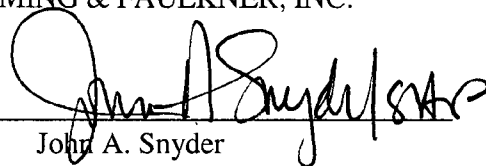
I hereby certify that a true and correct copy of the Certified Mail Return Receipts evidencing service of Plaintiff Kitko Wood Products, Inc.'s Complaint in the above-captioned matter was mailed by U.S. First Class Mail, postage prepaid, on this 6th day of May, 2004, to the attorneys/parties of record:

Munire Furniture Co., Inc.
55 Webro Road
Clifton, New Jersey 07012

Munire Furniture Co., Inc.
160 Passaic Avenue, Building 113
Kearny, New Jersey 07032-1128

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____



John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

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

KITKO WOOD PRODUCTS, INC.,

Plaintiff,

v.

MUNIRE FURNITURE CO., INC.,

Defendant.

:
:
: No. 04-501-CD
:
: Type of Pleading:
: **Notice of Intent**
:
:
: Type of Case: **Civil**
:
: Filed on behalf of: **Plaintiff**
:
:
: Counsel of Record for this Party:
: John A. Snyder
: I.D. No. 66295
: McQuaide, Blasko, Schwartz,
: Fleming & Faulkner, Inc.
: 811 University Drive
: State College, PA 16801
: Phone: (814) 238-4926
: Fax: (814) 238-9624

FILED

JUL 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

KITKO WOOD PRODUCTS, INC., :
 :
Plaintiff, : No. 04-501-C.D.
v. :
 :
MUNIRE FURNITURE CO., INC., :
 :
Defendant. :

NOTICE OF INTENT

TO: Munire Furniture Co., Inc.
% Kurt Olender, Esquire

DATE OF NOTICE: July 14, 2004

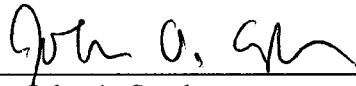
IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO FILE A RESPONSE TO THE COMPLAINT IN THIS CASE. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR RIGHT TO DEFEND AND THEREBY LOSE PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

*David S. Meholick, Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641, Ext. 5982*

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

Dated: July 14, 2004

By: 
John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

NOTICE OF INTENT

TO: Munire Furniture Co., Inc.

DATE OF NOTICE: July 14, 2004

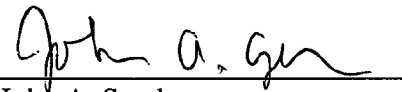
IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO FILE A RESPONSE TO THE COMPLAINT IN THIS CASE. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR RIGHT TO DEFEND AND THEREBY LOSE PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

*David S. Meholick, Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641, Ext. 5982*

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

Dated: July 14, 2004

By: 
John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
	:	
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Notice of Intent in the above-captioned matter was mailed by U.S. First Class Mail, postage prepaid, on this 14th day of July, 2004, to the attorneys/parties of record:

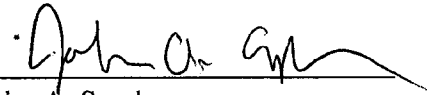
Kurt Olender, Esquire
Olender Feldman
2840 Marrs Avenue
Union, NJ 07083

Munire Furniture Co., Inc.
55 Webro Road
Clifton, New Jersey 07012

Munire Furniture Co., Inc.
160 Passaic Avenue, Building 113
Kearny, New Jersey 07032-1128

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____


John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

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

KITKO WOOD PRODUCTS, INC.,

Plaintiff,

v.

MUNIRE FURNITURE CO., INC.,

Defendant.

:
:
: No. 04-501-CD
:
: Type of Pleading:
: **Praecipe for Entry of Default Judgment**
:
:
: Type of Case: **Civil**
:
:
: Filed on behalf of: **Plaintiff**
:
:
: Counsel of Record for this Party:
: John A. Snyder
: I.D. No. 66295
: McQuaide, Blasko, Schwartz,
: Fleming & Faulkner, Inc.
: 811 University Drive
: State College, PA 16801
: Phone: (814) 238-4926
: Fax: (814) 238-9624

FILED

JUL 28 2004

William A. Shaw
Prothonotary/Clerk of Courts

NOTICE TO DEFENDANT 3 ADDRESS
STATEMENT TO ATTORNEY
1 CHECK TO ATTORNEY

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

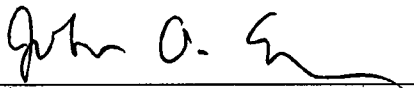
PRAECIPE FOR ENTRY OF DEFAULT JUDGMENT

TO THE PROTHONOTARY:

Kindly enter judgment in favor of the Plaintiff and against Defendant in the amount of \$147,243.69. Pursuant to Pa.R.C.P. 237.1, Plaintiff certifies that Defendant was served with a copy of a written Notice of Intent to file a Praecipe for Default Judgment. A true and correct copy of the Notice and the Certificate of Service reflecting same is attached hereto as Exhibit "A".

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

Dated: July 28, 2004

By: 

John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

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

KITKO WOOD PRODUCTS, INC.,

Plaintiff,

v.

MUNIRE FURNITURE CO., INC.,

Defendant.

No. 04-501-CD

Type of Pleading:
Notice of Intent

Type of Case: **Civil**

Filed on behalf of: **Plaintiff**

Counsel of Record for this Party:

John A. Snyder

I.D. No. 66295

McQuaide, Blasko, Schwartz,

Fleming & Faulkner, Inc.

811 University Drive

State College, PA 16801

Phone: (814) 238-4926

Fax: (814) 238-9624

FILED
C-26
JUL 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
	:	
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

NOTICE OF INTENT

TO: Munire Furniture Co., Inc.
% Kurt Olender, Esquire

DATE OF NOTICE: July 14, 2004

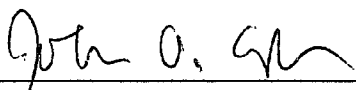
IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO FILE A RESPONSE TO THE COMPLAINT IN THIS CASE. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR RIGHT TO DEFEND AND THEREBY LOSE PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

*David S. Meholick, Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641, Ext. 5982*

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

Dated: July 14, 2004

By: 
John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

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

KITKO WOOD PRODUCTS, INC., :
 :
Plaintiff, : No. 04-501-C.D.
v. :
 :
MUNIRE FURNITURE CO., INC., :
 :
Defendant. :

NOTICE OF INTENT

TO: Munire Furniture Co., Inc.

DATE OF NOTICE: July 14, 2004

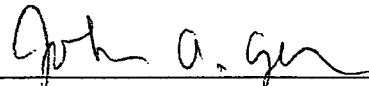
IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO FILE A RESPONSE TO THE COMPLAINT IN THIS CASE. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR RIGHT TO DEFEND AND THEREBY LOSE PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

*David S. Meholick, Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641, Ext. 5982*

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

Dated: July 14, 2004

By: 
John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
	:	
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Notice of Intent in the above-captioned matter was mailed by U.S. First Class Mail, postage prepaid, on this 14th day of July, 2004, to the attorneys/parties of record:

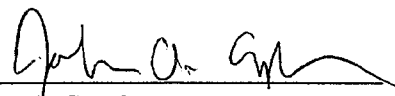
Kurt Olender, Esquire
Olender Feldman
2840 Marrs Avenue
Union, NJ 07083

Munire Furniture Co., Inc.
55 Webro Road
Clifton, New Jersey 07012

Munire Furniture Co., Inc.
160 Passaic Avenue, Building 113
Kearny, New Jersey 07032-1128

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____


John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

EXHIBIT A

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
	:	
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Praecipe for Entry of Default Judgment in the above-captioned matter was mailed by U.S. First Class Mail, postage prepaid, on this 28th day of July, 2004, to the attorneys/parties of record:

Kurt Olender, Esquire
Olender Feldman
2840 Marrs Avenue
Union, NJ 07083

Munire Furniture Co., Inc.
55 Webro Road
Clifton, New Jersey 07012

Munire Furniture Co., Inc.
160 Passaic Avenue, Building 113
Kearny, New Jersey 07032-1128

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

Kitko Wood Products, Inc.

Vs.

No. 2004-00501-CD

Munire Furniture Co., Inc.

To: DEFENDANT(S)

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$147,243.69 on the July 28, 2004.

William A. Shaw
Prothonotary

William A. Shaw

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,
PENNSYLVANIA
STATEMENT OF JUDGMENT

Kitko Wood Products, Inc.
Plaintiff(s)

No.: 2004-00501-CD

Real Debt: \$147,243.69

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Munire Furniture Co., Inc.
Defendant(s)

Entry: \$20.00

Instrument: Default Judgment

Date of Entry: July 28, 2004

Expires: July 28, 2009

Certified from the record this July 28, 2004

William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment,
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney

6A

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	No. 04-501-CD
Plaintiff,	:	
	:	Type of Pleading: Petition to Open Default
	:	Judgment
v.	:	
	:	Type of Case: Civil
MUNIRE FURNITURE CO., INC.,	:	
	:	Filed on behalf of: Defendant
Defendant.	:	
	:	Counsel for Record of this Party:
	:	Timothy A. Schoonover, Esquire
	:	I.D. No. 76260
	:	Stover, McGlaughlin, Gerace, Weyandt &
	:	McCormick, P.C.
	:	919 University Drive
	:	State College, PA 16801
	:	Phone: (814) 231-1850
	:	Fax: (814) 231-1860

FILED

AUG 05 2004

William A. Shaw
Prothonotary/Clerk of Courts

Atty Schoonover

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 04-501-CD
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

PETITION TO OPEN DEFAULT JUDGMENT

NOW COMES, the Defendant, Munire Furniture, Inc. ("Defendant") by and through its attorneys, Stover, McGlaughlin, Gerace, Weyandt & McCormick, P.C., and files this Petition to Open Default Judgment based upon the following averments of fact:

1. In September 2003, the Defendant began purchasing wood from the Plaintiff for use in manufacturing children's furniture.
2. The Defendant issued purchase orders to Plaintiff from New Jersey, specifying the type and quantity of wood that was required, and Plaintiff would respond by shipping the materials to the Defendant's facility in New Jersey, whereupon Defendant would process the materials and assemble the furniture, which would thereafter be shipped to Defendant's customer, which, in the case of Plaintiff supplied wood products, was solely to one customer of Defendant, Lajobi Industries, Inc. ("Lajobi").
3. Approximately six months into the Defendant's relationship with Plaintiff, Lajobi began experiencing quality problems with the finished goods, specifically, the tops of various pieces

of furniture in the joints were expanding and warping and painted pieces were experiencing cracking of the paint and paint adherence problems. According to Lajobi, the problem was that the wood that was used to construct the furniture contained too high a moisture content. As a result, as the wood further dried, it would cause warping and the problems previously indicated.

4. As a result of this problem, Lajobi failed and refused to pay Defendant for the furniture, a total of approximately \$720,000. Defendant in turn refused to pay Plaintiff until the dispute with Lajobi was resolved, in the amount of approximately \$145,000. In turn, Babies-R-Us, the retailer of the finished product, refused to accept the furniture and demanded that the furniture be removed from its facility and that it be credited the costs thereof by Lajobi. Correspondingly, Lajobi made the same demand upon Defendant.

5. On or about April 12, 2004, a Complaint was filed against Defendant alleging Breach of Contract, Unjust Enrichment and Promissory Estoppel.

6. On or about April 13, 2004, Plaintiff filed a Certificate of Service. A true and correct copy of said Certificate of Service is attached as Exhibit "A" and is incorporated herein as if set forth at length.

7. Defendant's General Counsel is Kurt D. Olender of the law firm of Olender Feldman, L.L.P. located at 2840 Morris Avenue, Union, New Jersey 07083.

8. Attorney Olender is not licensed to practice law in the Commonwealth of Pennsylvania.

9. Upon receipt of the Complaint, Attorney Olender advised counsel for Kitko, John Snyder, Esq., of the background of the dispute between the parties and the fact that the Kitko litigation instituted in this Court lacks necessary parties, specifically Lajobi and Babies-R-Us, Inc.

10. Attorney Olender also advised Attorney Snyder that the Plaintiff had minimal contacts with Pennsylvania and requested that Attorney Snyder voluntarily dismiss this litigation, and refile in New Jersey, but Mr. Snyder refused to do so. Attorney Olender further advised Attorney Snyder of the necessity of resolving the dispute with LaJobi prior to proceeding with any further litigation, and obtained the consent of Attorney Snyder to forbear for several weeks to permit the opportunity for resolution of the dispute with LaJobi. Attorney Snyder was kept apprised of the status of the dispute with LaJobi and aware that local counsel had not been retained pending a resolution with LaJobi.

11. On or about July 14, 2004, Attorney Snyder advised that no further forbearance would be granted and forwarded a 10 Day Default Notice to the Defendant and Attorney Olender, received by the Defendant and Attorney Olender on or about July 19, 2004.

12. After the 10 Day Default Notice was received, Attorney Olender discussed with Attorney Snyder that Attorney Olender had been unsuccessful in retaining local counsel and requested that Attorney Snyder forbear on filing for Default Judgment for ten days. Attorney Snyder advised Attorney Olender that notwithstanding knowledge that local counsel had not yet been retained, his client would not permit him to forbear. Thereafter, Attorney Snyder filed a Praecipe for Default Judgment on July 28, 2004, thereby entering judgment in favor of the Plaintiff in the amount of \$147,243.69.

13. Attorney Snyder was aware that the Defendant had not had the opportunity to obtain local counsel at the time the Default Judgment was entered.

14. The undersigned counsel was contacted for the first time regarding this matter on Friday, July 30, 2004, and was officially retained on Tuesday, August 3, 2004.

15. Attorney Olender is proceeding to institute suit against Lajobi and Kitko in State Court in New Jersey. The matter in controversy with Lajobi is directly predicated upon the failure of Kitko to have supplied conforming materials. The matter in controversy with Lajobi, and with Babies-R-Us, cannot be resolved without Kitko as a necessary party, and upon information and belief, neither Babies-R-Us nor Lajobi has any contact with Pennsylvania such that the Pennsylvania State Court would have jurisdiction over these parties in this matter.

16. If this litigation is not dismissed, Plaintiff and Defendant will be forced to litigate in two forums at the same time, but the litigation in Pennsylvania will lack all necessary parties and will not result in a final adjudication of this matter.

17. Furthermore, the Defendant has not had sufficient minimum contacts with Pennsylvania such that it would be appropriate for this Court to assert jurisdiction over the Defendant. All orders for Plaintiff's products originated from New Jersey, were shipped to New Jersey by Plaintiff, and all payments therefore originated from New Jersey. The resulting furniture products were manufactured in New Jersey, distributed in New Jersey and ultimately sold to Babies-R-Us in New Jersey. All of the parties, party witnesses, third-party witnesses, and the location of the products at issue are in New Jersey.

18. Defendant has attached proposed Preliminary Objections asserting this Court lacks jurisdiction over the Defendant, which are labeled Exhibit "B" and are incorporated herein as if set forth at length.

WHEREFORE, the Defendant respectfully requests that this Court enter an Order striking the Default Judgment from the record and grant the Defendant leave of Court to file the Preliminary Objections attached hereto as Exhibit "B."

Respectfully submitted,

STOVER, MCGLAUGHLIN, GERACE,
WEYANDT & MCCORMICK, P.C

By: 

Timothy A. Schoonover, Esquire
Attorney for Defendant
919 University Dr.
State College, PA 16801
(814) 231-1850

Dated: August 4, 2004

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

KITKO WOOD PRODUCTS, INC.,

Plaintiff,

v.

MUNIRE FURNITURE CO., INC.,

Defendant.

No. 04-501-C.D.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff Kitko Wood Products, Inc.'s Complaint in the above-captioned matter was mailed by U.S. First Class Mail, Certified Mail (return receipt requested), postage prepaid, on this 13 day of April, 2004, to the attorneys/parties of record:

Munire Furniture Co., Inc.
55 Webro Road
Clifton, New Jersey 07012

Munire Furniture Co., Inc.
160 Passaic Avenue, Building 113
Kearny, New Jersey 07032-1128

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: John A. Snyder

John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

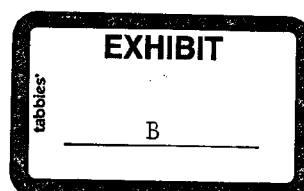
Attorneys for Plaintiff

EXHIBIT

A

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	No. 04-501-CD
Plaintiff,	:	
	:	Type of Pleading: Defendant's Preliminary
	:	Objections to Jurisdiction
v.	:	
	:	Type of Case: Civil
MUNIRE FURNITURE CO., INC.,	:	
	:	Filed on behalf of: Defendant
Defendant.	:	
	:	Counsel for Record of this Party:
	:	Timothy A. Schoonover, Esquire
	:	I.D. No. 76260
	:	Stover, McGlaughlin, Gerace, Weyandt &
	:	McCormick, P.C.
	:	919 University Drive
	:	State College, PA 16801
	:	Phone: (814) 231-1850
	:	Fax: (814) 231-1860



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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 04-501-CD
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

DEFENDANT'S PRELIMINARY OBJECTIONS TO JURISDICTION

NOW COMES, the Defendant, Munire Furniture, Inc., by and through its attorneys, Stover, McGlaughlin, Gerace, Weyandt & McCormick, P.C., and files Preliminary Objections to the jurisdiction of this Court over the Defendant based upon the following averments of fact:

1. Munire Furniture, Inc. ("Munire") is a New Jersey Corporation with its principal place of business in Clifton, New Jersey. Munir Hussain is the President and sole shareholder of Munire.
2. Munire is a manufacturer of children's furniture. All manufacturing takes place in Clifton, New Jersey, where raw materials are received from various suppliers, and then cut, assembled and painted into the final product which is then shipped to distributors and/or retailers from its facility in New Jersey.
3. Munire does not maintain any place of business outside of the state of New Jersey and has no physical or other presence in any other state aside from selling to customers that have locations in other states. Munire does not have any customers in the Commonwealth of Pennsylvania.

4. Kitko Wood Products, Inc. ("Kitko") was formerly a supplier of raw materials to Munire. Specifically, Kitko supplied wood that Munire would process and assemble into finished furniture products.

5. Munire entered into a supply relationship beginning in 2003. Under the arrangement between Munire and Kitko, Kitko was to supply wood that was suitable for processing and assembly into finished furniture products. In connection with initiating this relationship, Munir Hussain made approximately 2-3 initial trips to Kitko's facility to introduce himself and to look at their facility. Other than those few trips at the beginning of the relationship, Mr. Hussain has had no other contact with Kitko in Pennsylvania and Munire has had no other presence in Pennsylvania.

6. Kitko and Munire did not have a formal written agreement, instead they had an understanding as to the duration of the relationship and the types of materials that Munire would require. Thereafter, Munire would issue purchase orders to Kitko from New Jersey, specifying the type and quantity of wood that was required, and Kitko would respond by shipping the materials to the Munire facility in New Jersey, whereupon Munire would process the materials and assemble the furniture which would thereafter be shipped to Munire's customer, which, in the case of Kitko supplied wood products, was solely to one customer, Lajobi Industries, Inc. ("Lajobi").

7. Over the course of the parties' eight month relationship, Munire placed approximately 20 orders with Kitko, all of which originated from New Jersey and were shipped by Kitko to New Jersey. The materials purchased from Kitko were used to assemble furniture that was sold to Lajobi, a New Jersey based distributor, which then sold the finished goods to its customer, Babies-R-Us, also located in New Jersey. The materials purchased from Kitko were also used to assemble furniture that was sold by Munire to specialty customers, also located solely in New

Jersey.

8. Significantly, Munire incurred substantial costs with its specialty customers having them agree to sell furniture constructed of the wood sold by Kitko, for production of new marketing materials and displays to feature the type of wood sold by Kitko. When Kitko sold nonconforming materials, Munire was forced to change its supplier and cause its specialty customers to again revise their marketing and displays, all at cost to Munire.

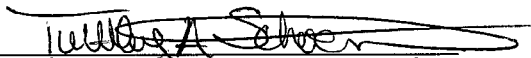
9. The relationship between Plaintiff and Defendant has been terminated due to the failure of the Plaintiff's products to conform to the Defendant's required specifications.

10. The contacts by the Defendant with the Commonwealth of Pennsylvania do not rise to a level to allow this Court to exercise jurisdiction over the Defendant under the Commonwealth's long-arm statute and fail to meet the Due Process requirements of the Fourteenth Amendment of the United States Constitution.

WHEREFORE, the Defendant respectfully requests that this Court enter an Order sustaining the Defendant's Preliminary Objections and dismissing Plaintiff's Complaint with prejudice due to this Court's lack of jurisdiction over the Defendant, Munire Furniture, Inc.

Respectfully submitted,

STOVER, MCGLAUGHLIN, GERACE,
WEYANDT & MCCORMICK, P.C

By: 
Timothy A. Schoonover, Esquire
Attorney for Defendant
919 University Dr.
State College, PA 16801
(814) 231-1850

Dated: August 4, 2004

VERIFICATION

I, Munir Hussain, President of Munire Furniture, Inc., verify that the statements made in the foregoing pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.


Munir Hussain, President


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Preliminary Objections to Jurisdiction has been served this 4th day of August 2004 upon the following individual by First Class U.S. Mail, Postage Prepaid, at the following address:

John A. Snyder
McQuaide, Blasko, Schwartz,
Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

STOVER, MCGLAUGHLIN, GERACE,
WEYANDT & MCCORMICK, P.C

By: _____


Holly E. Morrison, Secretary

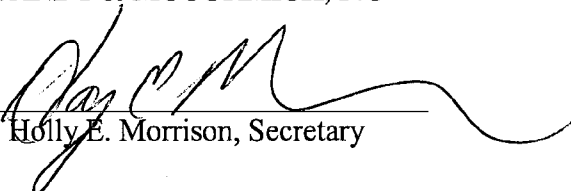
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Petition to Open Default Judgment has been served this 4th day of August 2004 upon the following individual by First Class U.S. Mail, Postage Prepaid, at the following address:

John A. Snyder
McQuaide, Blasko, Schwartz,
Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

STOVER, MCGLAUGHLIN, GERACE,
WEYANDT & MCCORMICK, P.C

By: _____


Holly E. Morrison, Secretary

GA

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

KITKO WOOD PRODUCTS, INC.,

Plaintiff,

v.

MUNIRE FURNITURE CO., INC.,

Defendant.

No. 04-501-CD

FILED

AUG 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

RULE TO SHOW CAUSE

Now this 9 day of August, 2004, upon consideration of the attached Petition, a Rule is hereby issued upon Plaintiff to Show Cause why the Petition should not be granted. Rule Returnable the 30 day of August, 2004, for filing written response.

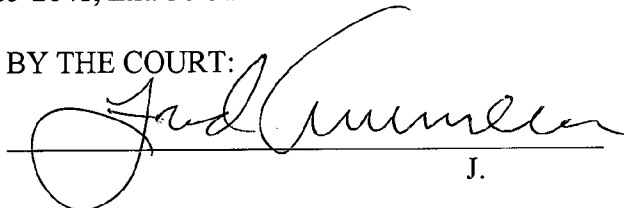
NOTICE

A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 50-51

BY THE COURT:


J.

KITKO WOOD PRODUCTS, INC.,

Plaintiff,

v.

MUNIRE FURNITURE CO., INC.,

Defendant.

:
: No. 04-501-CD
:
: Type of Pleading: Affidavit of Service
:
: Type of Case: Civil
:
: Filed on behalf of: Defendant
:
: Counsel for Record of this Party:
: Timothy A. Schoonover, Esquire
: I.D. No. 76260
: Stover, McGlaughlin, Gerace, Weyandt &
: McCormick, P.C.
: 919 University Drive
: State College, PA 16801
: Phone: (814) 231-1850
: Fax: (814) 231-1860

FILED ^{NO} CC
m/11:0827
AUG 13 2004
E/AB

William A. Shaw
Prothonotary/Clerk of Courts

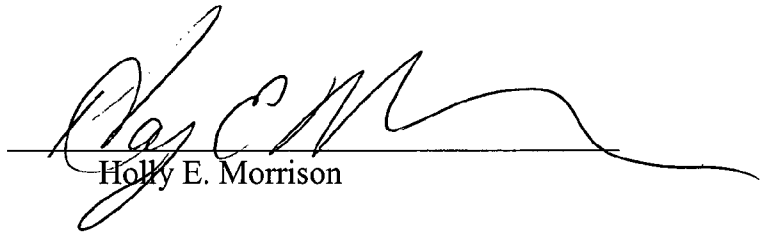
**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW**

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 04-501-CD
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

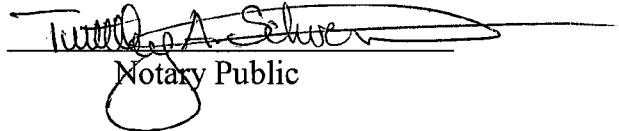
AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA: : SS.
COUNTY OF CENTRE :

I, Holly E. Morrison, being duly sworn according to law, depose and say that as secretary for Stover, McGlaughlin, Gerace, Weyandt & McCormick, P.C., 919 University Drive, State College, Pennsylvania 16801, on August 10, 2004, I mailed a true and correct copy of the Rule to Show Cause to Plaintiff's counsel, John A. Snyder, Esquire, McQuaide Blasko, 811 University Drive, State College, Pennsylvania 16801 by United States Postal Service Certified Mail, Return Receipt Requested, Tracking No. 7002 3150 0001 8271 8702, a copy of said Certified Receipt being attached hereto; that the same was received by Plaintiff's counsel, as shown by the United States Postal Service certified receipt likewise attached hereto; and that the facts contained herein are true and correct to the best of my knowledge, information and belief.


Holly E. Morrison

SWORN TO AND SUBSCRIBED
before me this 12th day of August, 2004.


Notary Public

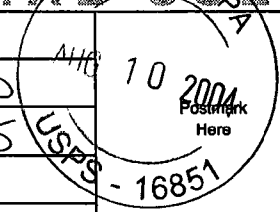
COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Timothy A. Schoonover, Notary Public
State College Boro, Centre County
My Commission Expires Oct. 31, 2007
Member, Pennsylvania Association Of Notaries

7002 3150 0001 8271 8702

U.S. Postal Service™
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OFFICIAL USE

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Certified Fee	<u>2.30</u>	
Return Receipt Fee (Endorsement Required)	<u>1.75</u>	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ <u>4.42</u>	

Sent To	<u>John A. Snyder, Esq.</u>
Street, Apt. No., or PO Box No.	<u>811 University Drive</u>
City, State, ZIP+4	<u>State College, PA 16801</u>

PS Form 3800 (June 2002) See Reverse for Instructions

Certified Mail Provides:

- A mailing receipt
- A unique identifier for your mailpiece
- A record of delivery kept by the Postal Service for two years

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- Certified Mail is *not* available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry. Internet access to delivery information is not available on mail addressed to APOs and FPOs.

PS Form 3800, June 2002 (Reverse)

17

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

John A. Snyder, Esq.
McQuaide Blakco
811 University Drive
State College, PA 16801

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
Michael D. Ross
- B. Received by (Printed Name) C. Date of Delivery
Michael D. Ross *8/11/04*
- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number

(Transfer from service label)

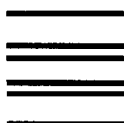
7002 3150 0001 8271 8702

PS Form 3811, August 2001

Domestic Return Receipt

102595-01-M-2509

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Timothy A. Schonauer, Esq.
919 University Drive
State College, PA 16801

CA

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

KITKO WOOD PRODUCTS, INC.,

Plaintiff,

v.

MUNIRE FURNITURE CO., INC.,

Defendant.

:
: No. 04-501-CD
:
: Type of Pleading:
: **Answer and New Matter to Defendant's**
: **Petition to Open Default Judgment**
:
: Type of Case: **Civil**
:
: Filed on behalf of: **Plaintiff**
:
:
: Counsel of Record for this Party:
: John A. Snyder
: I.D. No. 66295
: McQuaide, Blasko, Schwartz,
: Fleming & Faulkner, Inc.
: 811 University Drive
: State College, PA 16801
: Phone: (814) 238-4926
: Fax: (814) 238-9624

FILED ^{ELK}
m/4:00/ ^{no}
AUG 25 2004 ^{CC}
William A. Shaw
Prothonotary/Clerk of Courts

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
	:	
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of _____, 2004, upon
consideration of Defendant's Petition to Open Default Judgment and Plaintiff's Answer and New
Matter in response thereto, it is hereby ORDERED and DECREED that said Petition is DENIED.

BY THE COURT:

J.

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
	:	
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

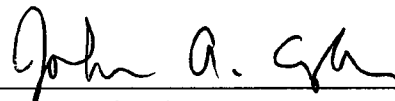
NOTICE TO PLEAD

TO: Munire Furniture Co., Inc.
% Timothy A. Schoonover, Esquire

YOU ARE HEREBY notified to plead to the within New Matter within twenty (20) days
from the date of service hereof or a default judgment may be entered against you.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

Dated: August 24, 2004

By: 
John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
	:	
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

**PLAINTIFF'S ANSWER AND NEW TO DEFENDANT'S PETITION
TO OPEN DEFAULT JUDGMENT**

AND NOW, comes Plaintiff, Kitko Wood Products, Inc., by and through its undersigned counsel, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and responds to Defendant's Petition to Open Default Judgment as follows:

1. Admitted in part and denied in part. It is admitted that Defendant issued purchase orders to Plaintiff in Glen Hope, Pennsylvania beginning on September 4, 2003, requesting the purchase of wood from Plaintiff. It is further admitted that Plaintiff accepted Defendant's offer of purchase thereby creating the contract(s) at issue in Glen Hope, Pennsylvania, and thereafter caused the wood to be shipped to Defendant. As to Defendant's intended use of the ordered wood, Plaintiff is without knowledge or information sufficient to form a belief thereon and the same is therefore denied and strict proof thereof demanded.

2. Admitted in part and denied in part. The averments in paragraph 1 are incorporated herein by reference. In fact, Defendant made multiple trips to Glen Hope, Pennsylvania to inspect the materials, the facilities and speak with Plaintiff's principals. Regarding the remainder of the allegations made by Defendant concerning what took place with the wood after it was shipped to Defendant, Plaintiff is, after reasonable investigation, without knowledge or

information sufficient to form a belief thereon. The same is therefore denied and strict proof thereof demanded.

3. Denied. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to what problems, if any, Defendant was experiencing with its finished products. Plaintiff is furthermore without knowledge or information sufficient to form a belief as to what the cause of Plaintiff's quality problems, if any, were. To the extent Defendant is asserting that Plaintiff shipped defective wood to Defendant, that allegation is specifically denied and strict proof thereof demanded.

4. Denied. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to what, if any, difficulties were encountered by Defendant in connection with its downstream transactions. Moreover, Plaintiff specifically denies that the wood provided to Defendant was in any way defective. To the contrary, the wood supplied by Plaintiff to Defendant was, at all times, properly dried and was consistent with applicable standards regarding same.

5. Admitted.

6. Admitted in part and denied in part. It is admitted that on April 13, 2004, Plaintiff filed a Certificate of Service reflecting that service had been made upon Plaintiff at its New Jersey addresses via Certified Mail, Return Receipt Requested. By way of further response, signature cards evidencing that service were filed on May 6, 2004, having been signed for by Defendant in April, 2004.

7. Admitted in part and denied in part. It is admitted that Mr. Olender has represented to the undersigned that he is counsel for Defendant Munire. It is further admitted that the referenced address is correct. As to whether Mr. Olender is in fact general counsel for

Defendant, Plaintiff is, after reasonable investigation, without information sufficient to form a belief thereon.

8. Admitted in part and denied in part. Although Mr. Olender may not have a license to practice law in Pennsylvania, according to Martindale-Hubbell, Mr. Olender's named partner, Michael Feldman, is admitted to practice in the Commonwealth of Pennsylvania.

9. Admitted in part and denied in part. It is admitted that the undersigned and Attorney Olender were in regular communication following the filing of the Complaint. It is denied that Lajobi and Babies-R-Us, Inc. are necessary or indispensable parties to the instant suit. Furthermore, at all times counsel for the Plaintiff requested Mr. Olender to substantiate his assertion that the wood in question was defective. At no time, up to and including the present, has any evidence substantiating that fact been provided by Defendant.

10. Admitted in part and denied in part. It is admitted that Attorney Olender requested additional time from Plaintiff. Furthermore, it is admitted that Plaintiff initially agreed to provide Attorney Olender with some additional time within which to secure counsel in Pennsylvania. Those initial conversations occurred in the first week of May 2004. Furthermore, at all times the undersigned counsel rejected suggestions by Attorney Olender that it was necessary to involve Defendant's downstream customers in this litigation. At all times, Defendant was warned, through Attorney Olender, that Plaintiff was a modest company that simply wanted to be paid for the product that he had supplied to Defendant, and that Plaintiff would not tolerate delays to involve Defendant's alleged downstream customers.

11. Denied. To the contrary, it was July 13, 2004, when the undersigned, via email, advised Attorney Olender that a 10-day notice would be filed. A true and correct copy of the email transmitted to Attorney Olender in that regard is attached hereto as Exhibit A.

12. Denied. To the contrary, Attorney Olender advised that he had in fact been successful in retaining local counsel, and that Defendant had retained Harry Levin, Esquire of Shumaker Williams in Harrisburg, Pennsylvania. In response to Attorney Olender's expressed concerns with Attorney Levin's ability to respond to this matter, the undersigned transmitted to Attorney Olender a list of attorneys from Clearfield and Centre Counties.

13. Denied. Defendant had full and fair opportunity to obtain local counsel prior to the entry of the default judgment. Defendant had approximately three months within which to do so. Furthermore, Defendant was, as a courtesy, provided with advance notice of the filing of the 10-day notice.

14. Denied. Plaintiff is, after reasonable investigation, without knowledge or information sufficient to form a belief as to the truth of the averments contained therein. The same are therefore denied and strict proof thereof demanded.

15. Denied. As to Defendant's intentions of initiating litigation in New Jersey, Plaintiff is, after reasonable investigation, without knowledge or information sufficient to form a belief thereon. The same is therefore denied and strict proof thereof demanded. Moreover, it is believed that Defendant's intentions regarding litigation in New Jersey are irrelevant to the instant matter. Furthermore, the alleged availability of recourse in New Jersey for Defendant suggests the absence of a need or basis for opening the instant judgment, since Defendant can pursue its recourse in New Jersey.

16. Denied. To the contrary, because a default judgment has been taken in the instant proceeding, there is no litigation necessary in Pennsylvania. In fact, it would only be if the instant default judgment is opened that Defendant would be required to litigate in two forums at the same time. It is denied that the instant action lacks any necessary or indispensable parties.

17. Denied. Plaintiff stands ready, willing and able to prove Defendant's significant and substantial contacts with Pennsylvania. Moreover, Defendant specifically and purposely availed itself of these contacts with Pennsylvania for the purpose of consummating the very transactions at issue. Consequently, it is specifically denied that personal jurisdiction over Defendant is not appropriate in this Court. As stated previously, Defendant submitted the offers in question to Pennsylvania, the offers were accepted in Pennsylvania, the contract was formed in Pennsylvania and Defendant made multiple trips to Glen Hope, Pennsylvania for the purpose of making arrangements for the very transactions at issue. Furthermore, Defendant specifically sought out Pennsylvania hardwood and a Pennsylvania hardwood supplier (Plaintiff) for the purposes of the transactions at issue. Moreover, it is believed and therefore averred that Defendant fully intended its products to enter the stream of commerce in Pennsylvania. In sum, Defendant has purposely and specifically availed itself of contacts with Pennsylvania for the purpose of consummating the very transactions at issue. Therefore, it is expressly denied that it would be in any way inappropriate for this Court to exercise jurisdiction over Defendant. In addition, the purported defense of lack of personal jurisdiction has been waived pursuant to Pa. R.C.P. 1032(a).

18. Admitted in part and denied in part. It is admitted that Defendant has attached, as Exhibit B, proposed Preliminary Objections. It is denied, for the reasons stated above, that said proposed Preliminary Objections are timely or meritorious. To the contrary, they have been waived pursuant to Pa. R.C.P. 1032(a).

WHEREFORE, Plaintiff Kitko Wood Products, Inc. respectfully requests that this Honorable Court deny Defendant's Petition to Open Default Judgment and maintain the viability of the judgment dated July 28, 2004, in the amount of \$147,243.69 and award Plaintiff such other relief as may be just and equitable.

NEW MATTER

19. Plaintiff incorporates herein by reference, the same as though set forth at length, paragraphs 1 through 18, inclusive.

20. Plaintiff has, at all times, with respect to the underlying proceeding, fully adhered to its duty of candor to opposing counsel. In fact, in several instances, Plaintiff afforded opposing counsel courtesies which are above and beyond the call of duty, such as advance notice of the intent to take default judgment via email, and the courtesy provision of local attorney lists.

21. In order to prevail on a request for a petition to open a default judgment, Defendant is obligated to demonstrate a reasonable excuse for its failure to respond to the underlying complaint and the existence of a meritorious defense.

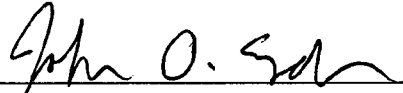
22. Defendant is unable to make either required showing in the instant case. Defendant had every opportunity to timely respond to the instant complaint. Moreover, by reason of its failure to timely respond to the instant complaint, Defendant is now unable to establish a meritorious defense pursuant to Pa. R.C.P. 1032. Furthermore, Defendant has, to date, produced no evidence whatsoever to demonstrate that the Plaintiff's wood was in any way defective. Consequently, Defendant has failed to make the *prima facie* showing necessary to open a default judgment.

23. For the foregoing reasons, it is respectfully submitted that Defendant's Petition fails to state a claim upon which relief can be granted and should therefore be stricken and/or dismissed.

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

Dated: August 24, 2004

By: 

John A. Snyder

I.D. No. 66295

811 University Drive

State College, PA 16801

(814) 238-4926

Attorneys for Plaintiff

EXHIBIT A

John Snyder

From: John Snyder
Sent: Tuesday, July 13, 2004 4:17 PM
To: Kurt Olender
Subject: Kitko Wood Products Inc. v. Munire, No. O4-501-CD (Clearfield County)

Kurt,

I am writing to give you a heads-up that my client has instructed me to proceed with the litigation. You will soon be receiving a "10 day" notice in the mail. This is a prerequisite, under Pa. Rules, to filing for a default judgment. You will have 10 days within which to file an answer. My client firmly believes that, while your client may have experienced problems with his products, those problems were not the result of my client selling defective wood. He also remains desirous of inspecting the allegedly damaged products, and is disappointed that he has not been permitted to do so yet.

Please feel free to contact me if you have any comments or questions.

Sincerely,

John Snyder

John A. Snyder
McQuaide Blasko
811 University Drive
State College, PA 16801

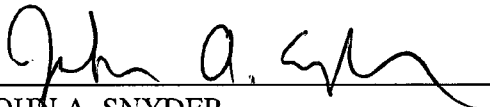
jasnyder@mcquaideblasko.com

Phone (814) 238-4926
Fax (814) 238-9624

8/20/2004

VERIFICATION

John A. Snyder, hereby verifies that he is the attorney of record for Plaintiff, Kitko Wood Products, Inc., in the foregoing action, and as such, he is authorized to make this verification on its behalf, and that the facts set forth in the foregoing Answer and New Matter to Defendant's Petition to Open Default Judgment are true and correct to the best of his information, knowledge and belief. This verification is hereby made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.


JOHN A. SNYDER

Dated: August 24, 2004

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

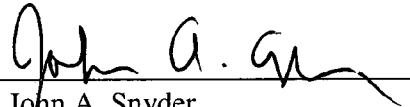
KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
	:	
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Answer and New Matter to Defendant's Petition to Open Default Judgment in the above-captioned matter was mailed by U.S. First Class Mail, postage prepaid, on this 24th day of August, 2004, to the attorneys/parties of record:

Timothy A. Schoonover, Esquire
Novak, Stover & Furst
122 East High Street
P.O. Box 209
Bellefonte, PA 16823-0209

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
John A. Snyder
I.D. No. 66295
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

CA

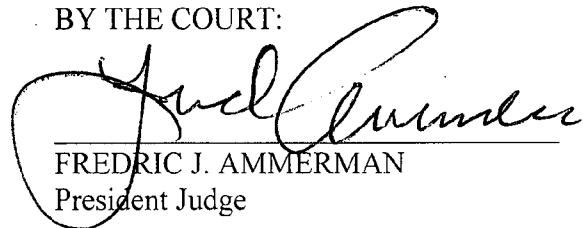
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

KITKO WOOD PRODUCTS, INC. :
:
vs. : No. 04-501-CD
:
MUNIRE FURNITURE CO., INC. :

ORDER

AND NOW, this 31 day of August, 2004, it is the
Order of the Court that argument on Defendant's Petition to Open Default Judgment in
the above-captioned matter has been scheduled for **Friday, September 24, 2004 at**
2:00 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED ^{ELK}
01/12:40/61
AUG 31 2004

William A. Shaw
Prothonotary/Clerk of Courts
ICC - Amy Snyder, Schoonover
(CIA envelopes)

FILED

AUG 31 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

KITKO WOOD PRODUCTS, INC.,

Plaintiff,

v.

MUNIRE FURNITURE CO., INC.,

Defendant.

:
: No. 04-501-CD
:
: Type of Pleading: Defendant's Answer to
: Plaintiff's New Matter
:
: Type of Case: Civil
:
: Filed on behalf of: Defendant
:
: Counsel for Record of this Party:
: Timothy A. Schoonover, Esquire
: I.D. No. 76260
: Stover, McGlaughlin, Gerace, Weyandt &
: McCormick, P.C.
: 919 University Drive
: State College, PA 16801
: Phone: (814) 231-1850
: Fax: (814) 231-1860

^{EGK}
FILED ^{NO}
^{cc}
m/11/13/04
SEP 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 04-501-CD
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

DEFENDANT'S ANSWER TO PLAINTIFF'S NEW MATTER

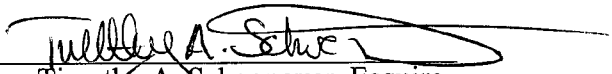
NOW COMES, the Defendant, Munire Furniture, Inc., by and through its attorneys, Stover, McGlaughlin, Gerace, Weyandt & McCormick, P.C., and answers the Plaintiff's New Matter as follows:

- 19. No response required.
- 20. Plaintiff's assertion is a conclusion of law to which no response is required.
- 21. Plaintiff's assertion is a conclusion of law to which no response is required.
- 22. Plaintiff's assertion is a conclusion of law to which no response is required.
- 23. Plaintiff's assertion is a conclusion of law to which no response is required.

WHEREFORE, the Defendant respectfully requests this Honorable Court grant its Petition to Open Default Judgment and allow leave of Court to file the Preliminary Objections attached to the Defendant's Petition.

Respectfully submitted,

STOVER, MCGLAUGHLIN, GERACE,
WEYANDT & MCCORMICK, P.C

By: 
Timothy A. Schoonover, Esquire
Attorney for Defendant
919 University Dr.
State College, PA 16801
(814) 231-1850

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant's Answer to Plaintiff's New Matter has been served this 8th day of September 2004 upon the following individual by First Class U.S. Mail, Postage Prepaid, at the following address:

John A. Snyder
McQuaide, Blasko, Schwartz,
Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

STOVER, MCGLAUGHLIN, GERACE,
WEYANDT & MCCORMICK, P.C

By:


Timothy A. Schoonover

GA


KITKO WOOD PRODUCTS, INC. :
 :
 vs. : No. 04-501-CD
 :
 MUNIRE FURNITURE CO., INC. :

ORDER

AND NOW, this 15th day of September, 2004, it is the Order of the Court that argument on Defendant's Petition to Open Default Judgment in the above-captioned matter has been rescheduled from September 24, 2004 to **Thursday, October 7, 2004 at 9:30 A.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED
013:0051
SEP 15 2004

William A. Shaw
Prothonotary/Clerk of Courts
ICC Atty's Snyder, Schoonover
(c) A envelopes)

CA

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

KITKO WOOD PRODUCTS, INC.,
Plaintiff

vs.

MUNIRE FURNITURE CO., INC.,
Defendant

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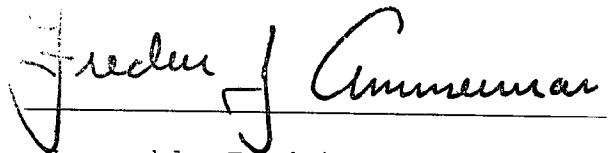
No. 2004-501-C.D.

ORDER

NOW, this 12th day of October, 2004, following Argument on Defendant's Petition to Open Default Judgment, it is the ORDER of this Court that the Petition to Open Default Judgment be and is hereby dismissed.

Opinion to be filed in the event of an appeal.

By the Court,



Honorable Fredric J. Ammerman
President Judge

FILED EOL
O 8:39 10-10-04 atty Snyder
2cc atty Schmitt

OCT 12 2004

William A. Shaw
Prothonotary

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

KITKO WOOD PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	No. 04-501-C.D.
	:	
v.	:	
	:	
MUNIRE FURNITURE CO., INC.,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Interrogatories Propounded by Plaintiff and Directed to Defendant in Aid of Execution in the above-captioned matter was mailed by U.S. First Class Mail, postage prepaid, on this 15th day of March, 2005, to the attorneys/parties of record:

Timothy A. Schoonover, Esquire Novak, Stover & Furst 122 East High Street P.O. Box 209 Bellefonte, PA 16823-0209	Michael J. Feldman OlenderFeldman, LLP 2840 Morris Avenue Union, New Jersey 07083
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McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

John A. Snyder
I.D. No. 66295
Russell A. Ventura
I.D. No. 83836
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Plaintiff

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William A. Shaw
Prothonotary Clerk of Courts