

04-1237-CD  
MILDRED MCCULLOUGH VS T-N-T CARPORTS, INC, et al

Mildred McCullough vs TNT Carports et al  
2004-1237-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD  
COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH  
Plaintiff

v.

T-N-T CARPORTS, INC. and GEORGE A.  
SIMCOX,  
Defendants

) CIVIL ACTION - LAW  
)  
)  
)

) NO. 04-1237-CD  
)  
)

**PRAECIPE FOR WRIT OF SUMMONS**

To: The Prothonotary of Clearfield County

Please issue a Writ of Summons against the defendants T-N-T Carports, Inc. and George


A. Simcox in the above-referenced matter.

Respectfully submitted,

  
Matthew W. Fuchs  
MacDONALD, ILLIG, JONES & BRITTON LLP  
100 State Street, Suite 700  
Erie, Pennsylvania 16507-1459  
(814) 870-7612

Attorneys for Plaintiff  
Mildred McCullough

838231

FILED   
AUG 12 2004  
12:40 PM  
to Atty  
William A. Shaw  
Prothonotary/Clerk of Courts  
icc accounts  
pd. 85.00

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

COPY

**SUMMONS**

**Mildred McCullough**

**Vs.**

**NO.: 2004-01237-CD**

**T-N-T Carports, Inc.  
George A. Simcox**

**TO: T-N-T CARPORTS, INC.  
GEORGE A. SIMCOX**

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

Date: 08/12/2004

---

William A. Shaw  
Prothonotary

Issuing Attorney:  
Matthew W. Fuchs  
100 State Street, Ste. 700  
Erie, PA 16507-1459  
(814) 870-7612

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

McCULLOUGH, MILDRED

VS.

T-N-T CARPORTS, INC. & GEORGE A. SIMCOX

SUMMONS

Sheriff Docket #

16167

04-1237-CD

**SHERIFF RETURNS**

NOW AUGUST 30, 2004 AT 9:07 AM SERVED THE WITHIN SUMMONS ON GEORGE A. SIMCOX, DEFENDANT AT RESIDENCE, 78 ARNOLDTOWN ROAD, CURWENSVILLE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO GEORGE A. SIMCOX A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

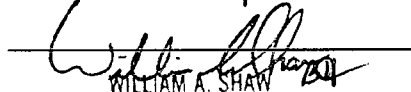
SERVED BY: DAVIS/MORGILLO

**Return Costs**

Cost	Description
22.87	SHERIFF HAWKINS PAID BY: ATTY Ck# 96709
10.00	SURCHARGE PAID BY: ATTY CK# 96708

Sworn to Before Me This

2<sup>nd</sup> Day Of Sept. 2004



WILLIAM A. SHAW

Prothonotary

My Commission Expires  
1st Monday in Jan. 2006

Clearfield Co., Clearfield, PA

So Answers,



Chester A. Hawkins

Sheriff

**FILED**

SEP 02 2004

William A. Shaw  
Prothonotary/Clerk of Courts

MILDRED McCULLOUGH,  
Plaintiff

v.

T-N-T CARPORTS, INC. and  
GEORGE A. SIMCOX,  
Defendants

) IN THE COURT OF COMMON PLEAS  
) OF CLEARFIELD COUNTY, PENNSYLVANIA  
)  
)  
) CIVIL ACTION - LAW  
)  
) NO. 2004-01237-CD

**AFFIDAVIT OF SERVICE**

Before me, a Notary Public, personally appeared Matthew W. Fuchs, who being duly sworn according to the law, deposes and states that:

1. On August 20, 2004 I served T-N-T Carports, Inc. with the foregoing Writ of Summons, by prepaid Certified Mail, Return Receipt Requested, addressed as follows:

T-N-T Carports, Inc.  
2344 Turkey Ford Road  
Mt. Airy, NC 27030

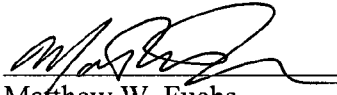
2. Copies of the sender's receipt and signed return receipt (Certified Mail Receipt No. 71603901984260551506) are attached hereto as Exhibit A.

3. Copy of the Writ of Summons is attached hereto as Exhibit B.

4. This Affidavit constitutes proof of service.

**FILED** *no cc*  
*m/12:556*  
SEP 03 2004  
William A. Shaw  
Prothonotary/Clerk of Courts

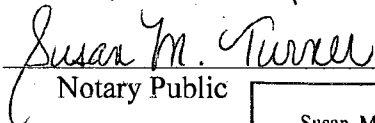
Respectfully submitted,



Matthew W. Fuchs  
MacDONALD, ILLIG, JONES & BRITTON LLP  
100 State Street, Suite 700  
Erie, Pennsylvania 16507-1459  
(814) 870-7612

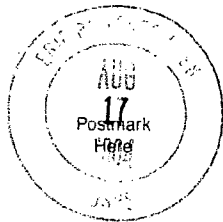
Attorneys for Plaintiff  
Mildred McCullough


Sworn to and subscribed before  
me this 1<sup>st</sup> day of September, 2004

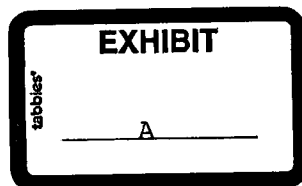
  
Notary Public

Notarial Seal  
Susan M. Turner, Notary Public  
City of Erie, Erie County  
My Commission Expires July 5, 2005

7160 3901 9842 6055 1506

<b>US Postal Service</b> <b>Certified Mail Receipt</b> Domestic Mail Only No Insurance Coverage Provided	Postage	\$ .37	
	Certified Fee	2.30	
	Return Receipt Fee (Endorsement Required)	1.75	
	Restricted Delivery Fee (Endorsement Required)	—	
	<b>Total Postage &amp; Fees</b>	<b>\$ 4.42</b>	
Sent To: <b>T-N-T Carports, Inc.</b> 2344 Turkey Ford Road Mt. Airy, NC 27030			
PS Form 3800, January 2003		US Postal Service	
SMT- 06000 5479C		<b>Certified Mail Receipt</b> 2	

2. Article Number  7160 3901 9842 6055 1506		<b>COMPLETE THIS SECTION ON DELIVERY</b>	
3. Service Type <b>CERTIFIED MAIL</b>		A. Received by (Please Print Clearly)	B. Date of Delivery
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		C. Signature x <i>Christina Clifton</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: <b>T-N-T Carports, Inc.</b> 2344 Turkey Ford Road Mt. Airy, NC 27030		D. Is delivery address different from item 1? If YES, enter delivery address below:	
PS Form 3811, January 2003		Domestic Return Receipt	



AUG 11 2004

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

**SUMMONS**

**Mildred McCullough**

**Vs.**

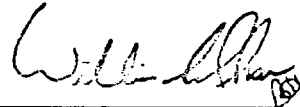
**NO.: 2004-01237-CD**

**T-N-T Carports, Inc.  
George A. Simcox**

**TO: T-N-T CARPORTS, INC.  
GEORGE A. SIMCOX**

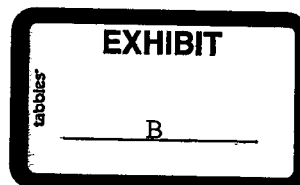
To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 08/12/2004



William A. Shaw  
Prothonotary

Issuing Attorney:  
Matthew W. Fuchs  
100 State Street, Ste. 700  
Erie, PA 16507-1459  
(814) 870-7612





FILED

SEP 03 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD  
COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH  
Plaintiff

v.

T-N-T CARPORTS, INC. and GEORGE A.  
SIMCOX,  
Defendants

) CIVIL ACTION - LAW  
)  
)

) NO. 2004-01237-CD  
)  
)

COMPLAINT

FILED 

SEP 24 2004

12:15 PM  
William A. Shaw  
Prothonotary/Clerk of Courts  
ms 46

Plaintiff Mildred McCullough, by her attorneys, MacDonald, Illig, Jones & Britton, LLP, files this Complaint against defendants T-N-T Carports, Inc. and George A. Simcox, stating as follows:

1. Plaintiff Mildred McCullough is an adult individual residing at 1033 Valley Road, West Decatur, Pennsylvania, 16878-9013.

2. Defendant T-N-T Carports, Inc. (hereinafter "TNT") is believed to be a corporation organized and existing under the laws of the State of North Carolina, and is qualified to do business in Pennsylvania, with its principle place of business at 2344 Turkey Ford Road, Mount Airy, North Carolina 27030.

3. At all times relevant to this dispute, defendant TNT was engaged in the business of designing, manufacturing, assembling, installing, distributing, selling and/or supplying metal carports. These carports were sold and marketed to the general public in Clearfield County and other counties across northwest and central Pennsylvania.

4. Defendant George A. Simcox is an adult individual residing at 78 Arnoldstown Road, Curwensville, Pennsylvania, 16833-1618.

5. At all times relevant to this dispute, defendant Simcox was engaged in the business of distributing, selling and/or supplying the metal carports manufactured by defendant TNT.

6. In October 2002, plaintiff McCullough purchased a carport manufactured by defendant TNT and sold by defendant Simcox.

7. Plaintiff McCullough based her decision to purchase the carport on representations from both defendants that the product was fit for use in central Pennsylvania (hereinafter "the region"). Specifically, she relied on literature from defendant TNT which indicated that the carport could withstand heavy loads.

8. Employees and/or agents of defendant TNT installed the carport.

9. On February 3, 2004, after a moderate snowfall, the carport collapsed, causing substantial damage not only to itself but also to plaintiff McCullough's 2004 Ford Escape, which was parked beneath the carport.

10. The collapse occurred when the two (2) metal screws connecting the carport's collar tie and main bent sheared through the collar tie, causing the main bent to buckle under the weight of the accumulated snow. The screws were positioned only 1/4" from the connection of the collar tie and main bent. This distance was insufficient to prevent the screws from shearing through the collar tie.

11. The roof of the carport was comprised of ribbed metal sheets that ran the length of the structure and prohibited the accumulated snow from sliding off onto the ground.

12. At the time of the collapse, the snow load on the roof of the carport was approximately 15 psf (pounds per square foot). Roof structures in the region are required to support a minimum snow load of 21 psf. *See* Section 1608.5 of the Building Officials and Code Administrators Basic/National Property Maintenance Code (hereinafter "the BOCA Code").

13. Defendants TNT and Simcox either knew or should have known that the carport could not support normally expected snow loads for the region.

### COUNT I

#### STRICT LIABILITY

#### McCullough v. T-N-T Carports, Inc.

14. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 13 as if fully set forth herein.

15. Defendant TNT designed, manufactured, assembled, installed, sold and/or supplied the carport in an unreasonably dangerous and defective condition as described in Paragraphs 10 through 12 above.

16. Plaintiff McCullough received the carport in such defective condition, and at the time of the collapse, was using the carport in a reasonably foreseeable manner as intended by defendant TNT.

17. As a direct and proximate result of the defective condition of the carport, plaintiff Schlimm sustained damages in the amount of \$6,764.69, representing the cost to repair the vehicle upon which the carport collapsed.

18. Defendant TNT is strictly liable for such damages in any or all of the following respects:

- a. in failing to design, manufacture, assemble, install, distribute and/or sell the subject carport in an adequate and safe condition for its intended use;
- b. in designing, manufacturing, assembling, installing, distributing and/or selling the carport without adequate testing and/or inspection regarding its capacity to withstand normally expected snow loads for the region;
- c. in failing to warn and/or instruct plaintiff McCullough that the carport could not support normally expected snow loads for the region.

WHEREFORE, plaintiff McCullough demands judgment against defendant TNT in the amount of \$6,764.69 plus interest and costs of suit.

## COUNT II

### NEGLIGENCE

#### McCullough v. T-N-T Carports, Inc.

19. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 18 as if fully set forth herein.

20. All of the damages sustained by plaintiff McCullough resulted directly and proximately from the conduct of defendant TNT, which was negligent in any or all of the following respects:

- a. in failing to design, manufacture, assemble, install, distribute and/or sell the subject carport in an adequate and safe condition for its reasonably foreseeable use;
- b. in failing to design the carport to withstand normally expected snow loads for the region;
- c. in designing, manufacturing, assembling, installing, distributing and/or selling the carport without adequate testing and/or inspection regarding its capacity to withstand normally expected snow loads for the region;
- d. in failing to warn and/or instruct plaintiff McCullough that the carport could not support normally expected snow loads for the region;

- e. in failing to design the carport to withstand a snow load of 21 psf as required by section 1608.5 of the BOCA code.

WHEREFORE, plaintiff McCullough demands judgment against defendant TNT in the amount of \$6764.69 plus interest and costs of suit.

### COUNT III

#### BREACH OF WARRANTY McCullough v. T-N-T Carports, Inc.

21. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 20 as if fully set forth herein.

22. Defendant TNT expressly and/or impliedly warranted that the carport was merchantable and fit for a particular purpose.

23. Defendant TNT breached said warranties by selling, distributing and/or supplying the carport in a defective condition as described in Paragraphs 8 through 10 above.

24. As a direct and proximate result of defendant TNT's breach, plaintiff McCullough has sustained damages in the amount of \$7,713.79, representing the cost to replace the carport and to repair the vehicle upon which it collapsed.

WHEREFORE, plaintiff McCullough demands judgment against defendant TNT in the amount of \$7,713.79 plus interest and costs of suit.

COUNT IV

VIOLATIONS OF PENNSYLVANIA'S UNFAIR TRADE  
PRACTICES AND CONSUMER PROTECTION LAW

McCullough v. T-N-T Carports, Inc.

25. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 24 as if fully set forth herein.

26. Defendant TNT, as a result of the conduct described above, has committed violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"). 73 P.S. §§ 201-1-209-6. Specifically, defendant TNT has violated the following subsections of 73 P.S. § 201-2(4):

(v) Representing that goods or services have . . . characteristics, ingredients, uses, benefits or quantities that they do not have . . . ;

. . . .

(vii) Representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model, if they are of another;

. . . .

(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.

27. 73 P.S. § 201-9.2 authorizes this Court to award up to three times plaintiff's actual damages.

WHEREFORE plaintiff McCullough demands judgment against defendant TNT in the amount of \$23,140.17 plus interest and costs of suit.

COUNT V  
STRICT LIABILITY  
McCullough v. Simcox

28. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 27 as if fully set forth herein.

29. Defendant Simcox distributed, sold and/or supplied the carport in an unreasonably dangerous and defective condition as described in Paragraphs 10 through 12 above.

30. Plaintiff McCullough received the carport in such defective condition, and at the time of the collapse, was using the carport in a reasonably foreseeable manner as intended by defendant Simcox.

31. As a direct and proximate result of the defective condition of the carport, plaintiff McCullough sustained damages in the amount of \$6,764.69, representing the cost to repair the vehicle upon which the carport collapsed.

32. Defendant Simcox is strictly liable for such damages in any or all of the following respects:

- a. in failing to distribute, sell and/or supply the subject carport in an adequate and safe condition for its intended use;
- b. in distributing, selling and/or supplying the carport without adequate testing and/or inspection regarding its capacity to withstand normally expected snow loads for the region;
- c. in failing to warn and/or instruct plaintiff McCullough that the carport could not support normally expected snow loads for the region.

WHEREFORE, plaintiff McCullough demands judgment against defendant Skyline in the amount of \$6,764.69 plus interest and costs of suit.



COUNT VI

NEGLIGENCE

McCullough v. Simcox

33. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 32 as if fully set forth herein.

33. All of the damages sustained by plaintiff McCullough resulted directly and proximately from the conduct of defendant Simcox, who was negligent in any or all of the following respects:

- a. in failing to distribute, sell and/or supply the subject carport in an adequate and safe condition for its reasonably foreseeable use;
- b. in distributing, selling and/or supplying the carport without adequate testing and/or inspection regarding its capacity to withstand normally expected snow loads for the region;
- c. in failing to warn and/or instruct plaintiff McCullough that the carport could not support normally expected snow loads for the region.

WHEREFORE, plaintiff McCullough demands judgment against defendant Skyline in the amount of \$7,764.69 plus interest and costs of suit.

COUNT VII

BREACH OF WARRANTY  
McCullough v. Skyline Simcox

34. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 33 as if fully set forth herein.

35. Defendant Simcox expressly and/or impliedly warranted that the carport was merchantable and fit for a particular purpose.

36. Defendant Simcox breached said warranties by selling, distributing and/or supplying the carport in a defective condition as described in Paragraphs 8 through 10 above.

37. As a direct and proximate result of defendant Simcox's breach, plaintiff McCullough has sustained damages in the amount of \$7,713.79, representing the cost to replace the carport and to repair the vehicle on top of which it collapsed.

WHEREFORE, plaintiff McCullough demands judgment against defendant Skyline in the amount of \$7,713.79 plus interest and costs of suit.

A JURY TRIAL IS DEMANDED AS TO ALL ISSUES

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document  
was served upon all other parties appearing  
of record by First-Class United States Mail  
sent on 9/22, 2004.



Respectfully submitted,



Matthew W. Fuchs  
MacDONALD, ILLIG, JONES & BRITTON LLP  
100 State Street, Suite 700  
Erie, Pennsylvania 16507-1459  
(814) 870-7612

Attorneys for Plaintiff  
Mildred McCullough

IN THE COURT OF COMMON PLEAS OF CLEARFIELD  
COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH  
Plaintiff

v.

T-N-T CARPORTS, INC. and GEORGE A.  
SIMCOX,  
Defendants

) CIVIL ACTION - LAW  
)  
)

) NO. 2004-01237-CD  
)  
)

**VERIFICATION**

I, Mildred McCullough, hereby depose and state that I am the plaintiff herein and that the averments set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. This Verification is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to intentional falsification to authorities.

Dated: 8/24/07

Mildred McCullough  
Mildred McCullough

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH,

Plaintiff,

vs.

T-N-T CARPORTS, INC., and  
GEORGE A. SIMCOX,

Defendants.

ORIGINAL

CIVIL DIVISION

NO. 2004-01237-CD

PRAECIPE FOR APPEARANCE

Code:

Issue No:

Filed on behalf of Defendant:  
T-N-T Carports, Inc.

Counsel of Record for this party:

Robert W. Deer, Esquire  
Pa. I.D. No. 35174

Jennifer M. Swistak, Esquire  
PA I.D. No. 75959

Deer & Associates  
Firm No. 103  
101 Smithfield Street  
Pittsburgh, PA 15222  
(412) 261-5771  
FAX (412) 232-0898  
email: [bobdeer@bobdeer.com](mailto:bobdeer@bobdeer.com)

Counsel for Plaintiff:

Matthew W. Fuchs, Esquire  
MacDonald, Illig, Jones & Britton, LLP  
100 State Street, Suite 700  
Erie, PA 16507-1498  
(814) 870-7600

JURY TRIAL DEMANDED

FILED

OCT 29 2004

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH,

Plaintiff,

vs.

T-N-T CARPORTS, INC. and  
GEORGE A. SIMCOX,

Defendants.

NO. 2004-01237-CD

PRAECIPE FOR APPEARANCE

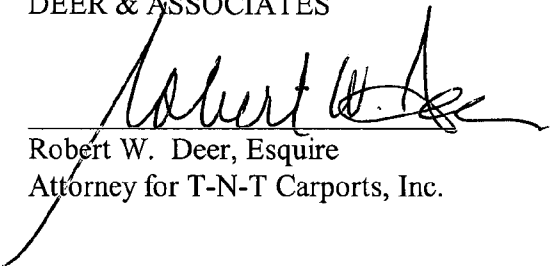
TO: William Shaw, Prothonotary,

Please enter the Appearance of Robert W. Deer, Esquire, Jennifer M. Swistak, Esquire  
and the firm of Deer & Associates on behalf of the defendant, T-N-T Carports, Inc., in the above  
captioned matter.

**JURY TRIAL DEMANDED**

Respectfully submitted,

DEER & ASSOCIATES

  
Robert W. Deer, Esquire  
Attorney for T-N-T Carports, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH,

Plaintiff,

vs.

T-N-T CARPORTS, INC. and  
GEORGE A. SIMCOX,

Defendants.

NO. 2004-01237-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Praecipe for Appearance has been served on counsel for or the party indicated:

(check all that apply)

- ☒ Plaintiff/Counsel      ☐ Defendant/Counsel      ☐ Original Defendant  
☐ Additional Defendant      ☐ Other (specify) \_\_\_\_\_

on the 27th day of October, 2004, by the following means:

- (Check all that apply): ☒ First Class Mail/Postage Prepaid.  
☐ Certified Mail, Return Receipt Requested.  
☐ Hand Delivery.  
☐ Facsimile transmission (fax number \_\_\_\_\_).  
☐ e-mail to: \_\_\_\_\_ (e-mail address).

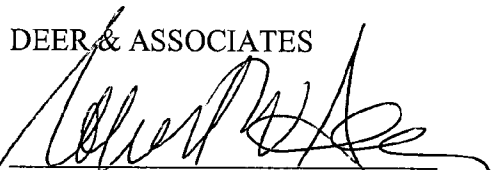
at the following address(es):

Matthew W. Fuchs, Esquire  
MacDonald, Illig, Jones & Britton, LLP  
100 State Street, Suite 700  
Erie, PA 16507-1498

George A. Simcox  
78 Arnoldstown Road  
Curwensville, PA 16833-1618

Respectfully submitted,

DEER & ASSOCIATES

  
Robert W. Deer, Esquire  
Attorney for T-N-T Carports, Inc.

**FILED**

OCT 29 2004

William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD  
COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH  
Plaintiff

v.

T-N-T CARPORTS, INC. and GEORGE A.  
SIMCOX,  
Defendants

) CIVIL ACTION - LAW  
)  
)  
) NO. 2004-01237-CD  
)  
)  
)

**NOTICE**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY, AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO, THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT, OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

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

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

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

FILED No cc  
m112361  
NOV 29 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD  
COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH	)	CIVIL ACTION - LAW
Plaintiff	)	
	)	
v.	)	NO. 2004-01237-CD
	)	
T-N-T CARPORTS, INC. and GEORGE A.	)	
SIMCOX,	)	
Defendants	)	

**FIRST AMENDED COMPLAINT**

Plaintiff Mildred McCullough, by her attorneys, MacDonald, Illig, Jones & Britton, LLP, files this First Amended Complaint against defendants T-N-T Carports, Inc. and George A. Simcox, stating as follows:

1. Plaintiff Mildred McCullough is an adult individual residing at 1033 Valley Road, West Decatur, Pennsylvania, 16878-9013.

2. Defendant T-N-T Carports, Inc. (hereinafter "TNT") is believed to be a corporation organized and existing under the laws of the State of North Carolina, and is qualified to do business in Pennsylvania, with its principle place of business at 2344 Turkey Ford Road, Mount Airy, North Carolina 27030.

3. At all times relevant to this dispute, defendant TNT was engaged in the business of designing, manufacturing, assembling, installing, distributing, selling and/or supplying metal carports. These carports were sold and marketed to the general public in Clearfield County and other counties across northwest and central Pennsylvania.

4. Defendant George A. Simcox is an adult individual residing at 78 Arnoldstown Road, Curwensville, Pennsylvania, 16833-1618.

5. At all times relevant to this dispute, defendant Simcox was engaged in the business of distributing, selling and/or supplying the metal carports manufactured by defendant TNT.

6. In October 2002, plaintiff McCullough purchased a carport manufactured by defendant TNT and sold by defendant Simcox. A true and correct copy of the Purchase Agreement is attached hereto as Exhibit A.

7. Plaintiff McCullough based her decision to purchase the carport on express and/or implied representations from both defendants that the product was merchantable and fit for use in central Pennsylvania (hereinafter "the region").

8. Specifically, she relied on the fact that defendant TNT, an experienced designer and manufacturer of carports, marketed and sold the product in the region, which is accustomed to heavy snowfall.

9. She further relied on the fact that defendant Simcox had installed on his business premises, which is also located in the region, a substantially similar carport manufactured by defendant TNT.

10. Based on these express and/or implied representations by defendants, plaintiff McCullough reasonably expected that the carport could withstand normally expected weather conditions for the region.

11. Employees and/or agents of defendant TNT installed the carport.

12. On February 3, 2004, after a moderate snowfall, the carport collapsed, causing substantial damage not only to itself but also to plaintiff McCullough's 2004 Ford Escape, which was parked beneath the carport.

13. The collapse occurred when the two (2) metal screws connecting the carport's collar tie and main bent sheared through the collar tie, causing the main bent to buckle under the weight of the accumulated snow. The screws were positioned only 1/4" from the connection of the collar tie and main bent. This distance was insufficient to prevent the screws from shearing through the collar tie.

14. The roof of the carport was comprised of ribbed metal sheets that ran the length of the structure and prohibited the accumulated snow from sliding off onto the ground.

15. At the time of the collapse, the snow load on the roof of the carport was approximately 15 psf (pounds per square foot). Roof structures in the region are required to support a minimum snow load of 21 psf. *See* Section 1608.5 of the Building Officials and Code Administrators Basic/National Property Maintenance Code (hereinafter "the BOCA Code").

16. Defendants TNT and Simcox either knew or should have known that the carport could not support normally expected snow loads for the region.

#### COUNT I

##### STRICT LIABILITY

##### McCullough v. T-N-T Carports, Inc.

17. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 16 as if fully set forth herein.

18. Defendant TNT designed, manufactured, assembled, installed, sold and/or supplied the carport in an unreasonably dangerous and defective condition as described in Paragraphs 13 through 15 above.

19. Plaintiff McCullough received the carport in such defective condition, and at the time of the collapse, was using the carport in a reasonably foreseeable manner as intended by defendant TNT.

20. As a direct and proximate result of the defective condition of the carport, plaintiff Schlimm sustained damages in the amount of \$6,764.69, representing the cost to repair the vehicle upon which the carport collapsed.

21. Defendant TNT is strictly liable for such damages in any or all of the following respects:

- a. in failing to design, manufacture, assemble, install, distribute and/or sell the subject carport in an adequate and safe condition for its intended use;
- b. in designing, manufacturing, assembling, installing, distributing and/or selling the carport without adequate testing and/or inspection regarding its capacity to withstand normally expected snow loads for the region;
- c. in failing to warn and/or instruct plaintiff McCullough that the carport could not support normally expected snow loads for the region.

WHEREFORE, plaintiff McCullough demands judgment against defendant TNT in the amount of \$6,764.69 plus interest and costs of suit.

## COUNT II

### NEGLIGENCE

#### McCullough v. T-N-T Carports, Inc.

22. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 21 as if fully set forth herein.

23. All of the damages sustained by plaintiff McCullough resulted directly and proximately from the conduct of defendant TNT, which was negligent in any or all of the following respects:

- a. in failing to design, manufacture, assemble, install, distribute and/or sell the subject carport in an adequate and safe condition for its reasonably foreseeable use;
- b. in failing to design the carport to withstand normally expected snow loads for the region;
- c. in designing, manufacturing, assembling, installing, distributing and/or selling the carport without adequate testing and/or inspection regarding its capacity to withstand normally expected snow loads for the region;
- d. in failing to warn and/or instruct plaintiff McCullough that the carport could not support normally expected snow loads for the region;
- e. in failing to design the carport to withstand a snow load of 21 psf as required by section 1608.5 of the BOCA code.

WHEREFORE, plaintiff McCullough demands judgment against defendant TNT in the amount of \$6764.69 plus interest and costs of suit.

### COUNT III

#### BREACH OF WARRANTY McCullough v. T-N-T Carports, Inc.

24. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 23 as if fully set forth herein.

25. As described in Paragraphs 7 through 10 above, defendant TNT expressly and/or impliedly warranted that the carport was merchantable and fit for a particular purpose--use in central Pennsylvania.

26. Defendant TNT breached said warranties by selling, distributing and/or supplying the carport in a defective condition as described in Paragraphs 13 through 15 above.

27. As a direct and proximate result of defendant TNT's breach, plaintiff McCullough has sustained damages in the amount of \$7,713.79, representing the cost to replace the carport and to repair the vehicle upon which it collapsed.

WHEREFORE, plaintiff McCullough demands judgment against defendant TNT in the amount of \$7,713.79 plus interest and costs of suit.

#### COUNT IV

#### VIOLATIONS OF PENNSYLVANIA'S UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW McCullough v. T-N-T Carports, Inc.

28. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 27 as if fully set forth herein.

29. Defendant TNT purposely failed to disclose to plaintiff McCullough that the carport could collapse if exposed to snow loads normally expected for the region.

30. This potential for collapse constitutes a dangerous and latent condition in the carport which defendant TNT had a duty to disclose.

31. The purpose of defendant TNT's nondisclosure of the condition was to induce plaintiff McCullough to purchase the carport.

32. Because of defendant TNT's nondisclosure of the condition, plaintiff McCullough, in purchasing the carport, reasonably expected that the carport was structurally sound and could withstand normally expected weather conditions for the region.

33. Defendant TNT, as a result of the conduct described above, has committed violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"). 73 P.S. §§ 201-1-209-6. Specifically, defendant TNT has violated the following subsections of 73 P.S. § 201-2(4):

(v) Representing that goods or services have . . . characteristics, ingredients, uses, benefits or quantities that they do not have . . .;

....

(vii) Representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model, if they are of another;

....

(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.

34. 73 P.S. § 201-9.2 authorizes this Court to award up to three times plaintiff's actual damages.

WHEREFORE plaintiff McCullough demands judgment against defendant TNT in the amount of \$23,140.17 plus interest and costs of suit.

#### COUNT V

#### STRICT LIABILITY McCullough v. Simcox

35. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 34 as if fully set forth herein.



36. Defendant Simcox distributed, sold and/or supplied the carport in an unreasonably dangerous and defective condition as described in Paragraphs 13 through 15 above.

37. Plaintiff McCullough received the carport in such defective condition, and at the time of the collapse, was using the carport in a reasonably foreseeable manner as intended by defendant Simcox.

38. As a direct and proximate result of the defective condition of the carport, plaintiff McCullough sustained damages in the amount of \$6,764.69, representing the cost to repair the vehicle upon which the carport collapsed.

39. Defendant Simcox is strictly liable for such damages in any or all of the following respects:

- a. in failing to distribute, sell and/or supply the subject carport in an adequate and safe condition for its intended use;
- b. in distributing, selling and/or supplying the carport without adequate testing and/or inspection regarding its capacity to withstand normally expected snow loads for the region;
- c. in failing to warn and/or instruct plaintiff McCullough that the carport could not support normally expected snow loads for the region.

WHEREFORE, plaintiff McCullough demands judgment against defendant Skyline in the amount of \$6,764.69 plus interest and costs of suit.

#### COUNT VI

#### NEGLIGENCE McCullough v. Simcox

40. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 39 as if fully set forth herein.

41. All of the damages sustained by plaintiff McCullough resulted directly and proximately from the conduct of defendant Simcox, who was negligent in any or all of the following respects:

- a. in failing to distribute, sell and/or supply the subject carport in an adequate and safe condition for its reasonably foreseeable use;
- b. in distributing, selling and/or supplying the carport without adequate testing and/or inspection regarding its capacity to withstand normally expected snow loads for the region;
- c. in failing to warn and/or instruct plaintiff McCullough that the carport could not support normally expected snow loads for the region.

WHEREFORE, plaintiff McCullough demands judgment against defendant Skyline in the amount of \$7,764.69 plus interest and costs of suit.

#### COUNT VII

##### BREACH OF WARRANTY McCullough v. Skyline Simcox

42. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 41 as if fully set forth herein.

43. Defendant Simcox expressly and/or impliedly warranted that the carport was merchantable and fit for a particular purpose--use in central Pennsylvania.

44. Defendant Simcox breached said warranties by selling, distributing and/or supplying the carport in a defective condition as described in Paragraphs 13 through 15 above.

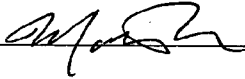
45. As a direct and proximate result of defendant Simcox's breach, plaintiff McCullough has sustained damages in the amount of \$7,713.79, representing the cost to replace the carport and to repair the vehicle on top of which it collapsed.

WHEREFORE, plaintiff McCullough demands judgment against defendant Simcox in the amount of \$7,713.79 plus interest and costs of suit.

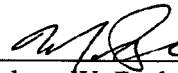
A JURY TRIAL IS DEMANDED AS TO ALL ISSUE

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon all other parties appearing of record by First-Class United States Mail sent on 11/24, 2004.



Respectfully submitted,



Matthew W. Fuchs  
MacDONALD, ILLIG, JONES & BRITTON LLP  
100 State Street, Suite 700  
Erie, Pennsylvania 16507-1459  
(814) 870-7612

Attorneys for Plaintiff  
Mildred McCullough

IN THE COURT OF COMMON PLEAS OF CLEARFIELD  
COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH  
Plaintiff

v.

T-N-T CARPORTS, INC. and GEORGE A.  
SIMCOX,  
Defendants

) CIVIL ACTION - LAW  
)  
)  
) NO.  
)  
)  
)  
)

**VERIFICATION**

I, Mildred McCullough, hereby depose and state that I am the plaintiff herein and that the averments set forth in the foregoing First Amended Complaint are true and correct to the best of my knowledge, information and belief. This Verification is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to intentional falsification to authorities.

Dated: 11-22-04

Mildred McCullough  
Mildred McCullough

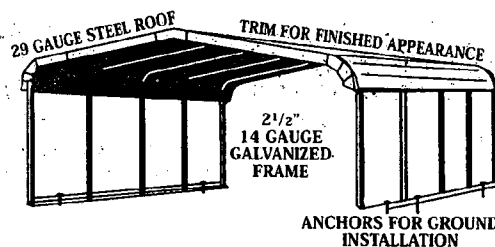




# TNT Carports, Inc.

2344 TURKEY FORD ROAD  
MOUNT AIRY, NC 27030

Business 336-789-3818 Toll Free 800-597-3597  
Fax 336-374-2949 Fax 336-789-4122



DEALER George A. Simcox COUNTY Cifd. PHONE 814-236-0504 DATE 10/25/02  
CUSTOMER NAME Mildred McCullough  
ADDRESS 1033 Valley Rd CITY West Decatur STATE PA ZIP 16878  
PHONE: WORK ( ) WIA HOME (814) 857-7713 OTHER ( ) WIA

UNIT	14 gauge HT. 18x21		<b>All Orders C.O.D.</b>  Price \$ <u>895.00</u>  Tax 6% PA \$ <u>53.70</u> Total \$ <u>948.70</u>  10% Down Payment Before taxes \$ <u>(89.50)</u> Deposited <sup>CK#</sup> <u>3468</u> <u>100.00</u> Balance Due at installation \$ <u>848.70</u>
COLOR	TOP <u>White</u> TRIM <u>Black</u>		
OPTIONS			
ELECTRICITY AVAILABLE <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> INST. CEMENT <input type="checkbox"/> GROUND <input checked="" type="checkbox"/> OTHER <u>PAVED DRIVEWAY</u>			

## Things You Should Know...

Please pay installation crew upon delivery of carport. **ALL ORDERS ARE C.O.D.**

It is your responsibility to inform installers of any underground cables, gas lines, or any other utility lines. We will not be responsible for any damage. You are responsible for permits or restrictions.

**Lot MUST be level or unit will be installed "AS IS" on lot.**

If land is not level or additions are to be made to carport, a \$50.00 return trip service charge will be added to the balance.

\*20 year limited warranty on rust through of framing on roofing material assuming normal user care and maintenance. (on 12 Gauge only)

**Customer Service Will Contact You One to Two Days Before Delivery & Setup.**

TNT will not be held liable for any money collected by the dealer.

Mildred M. McCullough  
Customer Signature

CK# 3475

CK# 3468 \$100.<sup>00</sup>  
Deposit

George A. Simcox  
Dealer Signature

11-5-02



\$25.00 Service Charge For All Returned Checks

Balance \$ 848.70 due on delivery

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH,

Plaintiff,

vs.

T-N-T CARPORTS, INC., and  
GEORGE A. SIMCOX,

Defendants.

CIVIL ACTION - LAW

NO. 2004-01237-CD

**NOTICE OF SERVICE OF  
DEFENDANT'S FIRST SET OF  
INTERROGATORIES AND FIRST  
REQUEST FOR PRODUCTION OF  
DOCUMENTS DIRECTED TO  
PLAINTIFF**

Filed on behalf of Defendant:  
T-N-T Carports, Inc.

Counsel of Record for this Defendant:

Robert W. Deer, Esquire  
Pa. I.D. No. 35174

Jennifer M. Swistak, Esquire  
PA I.D. No. 75959

DEER & ASSOCIATES  
Firm No. 103  
101 Smithfield Street  
Pittsburgh, PA 15222  
(412) 261-5771  
FAX (412) 232-0898

Counsel of Record for Plaintiff:

Matthew W. Fuchs, Esquire  
MacDonald, Illig, Jones & Britton,  
LLP  
100 State Street, Suite 700  
Erie, PA 16507-1498  
(814) 870-7600

**JURY TRIAL DEMANDED**

**FILED**  
m/1206/11  
NOV 29 2004

William A. Shaw  
Prothonotary/Clerk of Courts

Jennifer M. Swistak, Esquire  
Attorney for Defendant,  
T-N-T Carports, Inc.



GA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH,

Plaintiff,

vs.

T-N-T CARPORTS, INC., and  
GEORGE A. SIMCOX,

Defendants.

CIVIL ACTION - LAW

NO. 2004-01237-CD

**PRELIMINARY OBJECTIONS TO  
PLAINTIFF'S COMPLAINT**

Filed on behalf of Defendant:  
T-N-T Carports, Inc.

Counsel of Record for this Defendant:

Robert W. Deer, Esquire  
Pa. I.D. No. 35174

Jennifer M. Swistak, Esquire  
PA I.D. No. 75959

DEER & ASSOCIATES  
Firm No. 103  
101 Smithfield Street  
Pittsburgh, PA 15222  
(412) 261-5771  
FAX (412) 232-0898

Counsel of Record for Plaintiff:

Matthew W. Fuchs, Esquire  
MacDonald, Illig, Jones & Britton,  
LLP  
100 State Street, Suite 700  
Erie, PA 16507-1498  
(814) 870-7600

**JURY TRIAL DEMANDED**

**FILED**

*M 12:14 PM NOV 12 2004*

NOV 12 2004

WILLIAM J. PROTH...

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA		
MILDRED McCULLOUGH,	)	CIVIL ACTION - LAW
Plaintiff,	)	No. 2004-01237-CD
vs.	)	
T-N-T CARPORTS, INC. and	)	
GEORGE A. SIMCOX,	)	
Defendants.	)	

**PRELIMINARY OBJECTIONS TO  
COMPLAINT IN CIVIL ACTION**

AND NOW, comes the Defendant, T-N-T Carports, Inc., by and through its attorneys, DEER & ASSOCIATES, Robert W. Deer, Esquire and Jennifer M. Swistak, Esquire, and files the within PRELIMINARY OBJECTIONS TO COMPLAINT IN CIVIL ACTION, averring as follows:

1. This action arises from an incident that is alleged to have occurred on February 3, 2004 involving a carport owned by the Plaintiff, manufactured by Defendant T-N-T and sold by Defendant Simcox.

2. The Plaintiff initiated this action by Writ of Summons issued on August 12, 2004.

3. The Plaintiff subsequently filed a Complaint in Civil Action on September 24, 2004.

A true and correct copy of the Plaintiff's Complaint is attached hereto as Exhibit A.

4. The Complaint alleges that Defendant T-N-T's product was defective because it collapsed after a moderate snowfall when two metal screws connecting the carport's collar tie and main bent sheared through the collar tie, causing the main bent to buckle. (Complaint, ¶ 9-10).

5. The Complaint further alleges that the carport roof was comprised of ribbed metal sheets that ran the length of the structure and prohibited accumulated snow from sliding off onto the ground. (Complaint, ¶ 11).

6. The Plaintiff's Complaint sets forth causes of action against Defendant T-N-T for strict liability, negligence, breach of warranty and violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTP/CPL").

7. The Plaintiff seeks damages for the cost of replacing the carport and repairs to her vehicle which was located underneath the carport when it collapsed. (Complaint, ¶ 9).

### **COUNT I**

#### **MOTION TO STRIKE FOR LEGAL INSUFFICIENCY OF A PLEADING (DEMURRER)**

8. Defendant T-N-T hereby incorporates Paragraphs 1 through 7 of the within pleading as if same were more fully set forth herein at length.

9. Preliminary objections may be filed to any pleading raising the issue of legal insufficiency of a pleading (demurrer). Pa.R.C.P. 1028(a)(4).

10. Count III of the Plaintiff's Complaint presents a cause of action for breach of an expressly and/or implied warranty for merchantability and fitness for a particular use. (Complaint, ¶ 22).

11. A complaint for breach of warranty should disclose the nature of the warranty, set forth its terms, state when, by whom and by what authority it was made, whether the warranty was written or oral, its breach and the damages resulting therefrom, in a clear and explicit manner, with terms that are neither vague or evasive. 32 Pennsylvania Law Encyclopedia, Sales, § 294.

12. The Plaintiff pleads that Defendant T-N-T and its agents represented that the carport was fit for use in Central Pennsylvania and literature indicated that the carport could withstand heavy loads. (Complaint, ¶ 7). No further factual allegations were pled as to the nature and extent of any warranties made by Defendant T-N-T.

13. An express warranty by a seller is created by:

- (1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an

express warranty that the goods shall conform to the affirmation or promise.

- (2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.
- (3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

13 Pa.C.S.A. § 2313.

14. Unless excluded or modified, a warranty that goods shall be merchantable is implied in a contract for the sale of such goods if the seller is a merchant with respect to goods of that kind. 13 Pa.C.S.A. § 2314(a).

15. Goods are merchantable if the goods:

- (1) pass without objection in the trade under the contract description;
- (2) in the case of fungible goods, are of fair average quality within the description;
- (3) are fit for the ordinary purposes for which such goods are used;
- (4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;
- (5) are adequately contained, packaged, and labeled as the agreement may require; and,
- (6) conform to the promises or affirmations of fact made on the container or label, if any.

13 Pa.C.S.A. § 2314(b).

16. Unless excluded or modified, an implied warranty that the goods shall be fit for a particular purpose is created when the seller, at the time of contracting, has reason to know:

- (1) any particular purpose for which the goods are required; and,
- (2) that the buyer is relying on the skill or judgment of the seller to select or furnish suitable goods.

13 Pa.C.S.A. § 2315.

17. The Plaintiff's Complaint fails to plead the required elements for a cause of action for breach of express warranty, a breach of implied warranty of merchantability and/or a breach of implied warranty of fitness for a particular purpose.

18. Additionally, the warranties alleged by the Plaintiff are, by definition, created by the seller.

19. A "seller" is defined as a person who sells or contracts to sell goods. 13 Pa.C.S.A. § 2103(a).

20. The Plaintiff's Complaint alleges that Defendant Simcox was the "seller" of the carport and Defendant T-N-T was the manufacturer of the product. (Complaint, ¶ 6).

21. Since Defendant T-N-T did not sell the product in question to the Plaintiff, it could not create the warranties that were allegedly breached, as set forth in Count III of the Plaintiff's Complaint.

WHEREFORE, the Defendant, T-N-T Carports, Inc., respectfully requests that this Honorable Court dismiss Count III of the Plaintiff's Complaint for legal insufficiency.

## **COUNT II**

### **MOTION TO STRIKE FOR LEGAL INSUFFICIENCY OF A PLEADING (DEMURRER)**

22. Defendant T-N-T hereby incorporates Paragraphs 1 through 21 of the within pleading as if same were more fully set forth herein at length.

23. Preliminary objections may be filed to any pleading raising the issue of legal insufficiency of a pleading (demurrer). Pa.R.C.P. 1028(a)(4).

24. Count IV of the Plaintiff's Complaint alleges that Defendant T-N-T violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTP/CPL"), as set forth at 73 P.S. §§ 201-1 - 209-6. (Complaint, ¶ 26).

25. The Plaintiff's Complaint alleges generally that Defendant T-N-T violated violation 73 P.S. § 201-2(4)(v), (vii) & (xxi) with respect to representing that the goods had characteristics, ingredients, uses, benefits or quantities that they did not have; that the goods were of a particular standard, quality or grade, or that the goods were of a particular style or model, when they were of another; and that Defendant T-N-T engaged in other fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding, without pleading any factual allegations supporting these contentions. (Complaint, ¶ 26).

26. To the extent that the Plaintiff's UTP/CPL claims are based on fraud, the Plaintiff is required to plead all of the elements of fraud with particularity, as follows:

- (1) a misrepresentation;
- (2) a fraudulent utterance thereof;
- (3) an intention by the maker to induce the recipient thereby;
- (4) justifiable reliance by the recipient on the misrepresentation; and,
- (5) damage to the recipient as a proximate result of the misrepresentation.

Bash v. Bell Telephone Co. of Pa., 411 Pa. Super. 347, 358-359, 601 A.2d 825, 831 (1992).

27. The Plaintiff's Complaint fails to plead fraud on behalf of Defendant T-N-T with any particularity. Instead, the Plaintiff relies solely upon her allegation that the product was defective, which is insufficient for a fraud claim.

28. To the extent that the Plaintiff's UTP/CPL claims are based on breach of warranty, the Plaintiff's Complaint fails to plead a cause of action for breach of warranty, as set forth above.

WHEREFORE, the Defendant, T-N-T Carports, Inc., respectfully requests that this Honorable Court dismiss Count IV of the Plaintiff's Complaint due to legal insufficiency.

**COUNT III**

**MOTION TO STRIKE FOR  
FAILURE OF A PLEADING TO CONFORM TO LAW OR RULE OF COURT**

29. Defendant T-N-T hereby incorporates Paragraphs 1 through 28 of the within pleading as if same were more fully set forth herein at length.

30. Preliminary objections may be filed to any pleading raising the issue of the failure of the pleading to conform to law or rule of court. Pa.R.C.P. 1028(a)(2).

31. Rule 1019(i) of the Pennsylvania Rules of Civil Procedure requires that a pleading state specifically whether a claim or defense is based upon a writing, and if so, the pleader must attach a copy of the writing, or the material part of the writing, to the pleading. If the writing or a copy is not accessible to the pleader, the pleader must state the same along with the reason the writing is not accessible. In that instance, the pleader must set forth in the pleading the substance of the writing.

32. The basis for the Plaintiff's cause of action for breach of warranty, as well as her cause of action for violation of the Pennsylvania UTP/CPL, is the sale of the carport to the Plaintiff, however, the Plaintiff fails to attach a copy of the sales contract to her Complaint.

33. Additionally, Paragraph 7 of the Plaintiff's Complaint refers to literature which the Plaintiff alleges to have relied upon in making her decision to purchase the carport, but again, the Plaintiff fails to attach this literature to the Complaint.

34. The sales contract for the carport and the literature which the Plaintiff claims to have relied upon in making her decision to purchase the carport are material writings forming the basis for Counts III and IV of the Plaintiff's Complaint.

WHEREFORE, the Defendant, T-N-T Carports, Inc., respectfully requests that this Honorable Court dismiss the Plaintiff's Complaint due to the failure of the pleading to conform to Pa.R.C.P. 1019(i).

#### COUNT IV

##### MOTION FOR MORE SPECIFIC PLEADING

35. Defendant T-N-T hereby incorporates Paragraphs 1 through 34 of the within pleading as if same were more fully set forth herein at length.

36. Preliminary objections may be filed to any pleading raising the issue of insufficient specificity in a pleading. Pa.R.C.P. 1028(a)(3).

37. In the event that Count III of the Plaintiff's Complaint is not dismissed on the basis of legal insufficiency or the Plaintiff's failure to attach copies of material documents to the Complaint, then Defendant T-N-T seeks a more specific pleading with respect to Count III of the Complaint setting forth a cause of action for breach of express and/or implied warranty.

38. Although Count III of the Complaint is based on breach of warranty, the Plaintiff fails to state with sufficient specificity the substance of the warranties averred, nor does she state the manner in which the warranties were created, or when and how these warranties were communicated to her.

39. Additionally, the Plaintiff fails to attach to the Complaint the sales contract for the carport and the literature referred to in paragraph 6 of the Complaint, or state with specificity how Defendant T-N-T, who was not the seller of the product in question, created the warranties that were allegedly breached.

40. Furthermore, the Plaintiff fails to plead with sufficient specificity the elements of a claim for breach of express warranty, a claim for breach of implied warranty of merchantability and/or a claim for breach of implied warranty of fitness.

WHEREFORE, the Defendant, T-N-T Carports, Inc., respectfully requests that this Honorable Court grant the Defendant's request for a more specific pleading with respect to Count III of the Plaintiff's Complaint regarding the cause of action for breach of warranty, and direct the Plaintiff to file a more specific pleading within twenty (20) days.



**COUNT V**

**MOTION FOR MORE SPECIFIC PLEADING**

41. Defendant T-N-T hereby incorporates Paragraphs 1 through 40 of the within pleading as if same were more fully set forth herein at length.

42. Preliminary objections may be filed to any pleading raising the issue of insufficient specificity in a pleading. Pa.R.C.P. 1028(a)(3).

43. In the event that Count IV of the Plaintiff's Complaint is not dismissed on the basis of legal insufficiency or the Plaintiff's failure to attach copies of material documents to the Complaint, then Defendant T-N-T seeks a more specific pleading with respect to the Plaintiff's cause of action for violation of the Pennsylvania UTP/CPL.

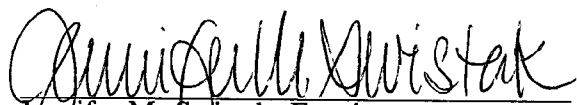
44. Although the Plaintiff's Complaint alleges that the Defendant violated three subsections of the UTP/CPL, those being 73 P.S. § 201-2(4)(v), (vii) & (xxi), the Plaintiff fails to plead with specificity any factual allegations which give rise to such violations.

45. To the extent that the Plaintiff's cause of action under the UTP/CPL relies on fraud or misrepresentation, the Plaintiff fails to plead with sufficient specificity the elements of fraud. Instead, the Plaintiff makes general allegations with no factual basis for same.

WHEREFORE, the Defendant, T-N-T Carports, Inc., respectfully requests that this Honorable Court grant the Defendant's request for a more specific pleading with respect to Count IV of the Plaintiff's Complaint regarding the cause of action for violation of Pennsylvania's UTP/CPL, and direct the Plaintiff to file a more specific pleading within twenty (20) days.

Respectfully submitted,

DEER & ASSOCIATES

  
Jennifer M. Swistak, Esquire  
Attorney for Defendant,  
T-N-T Carports, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD  
COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH	)	CIVIL ACTION - LAW
Plaintiff	)	
	)	
v.	)	NO. 2004-01237-CD
	)	
T-N-T CARPORTS, INC. and GEORGE A.	)	
SIMCOX,	)	
Defendants	)	

**COMPLAINT**

Plaintiff Mildred McCullough, by her attorneys, MacDonald, Illig, Jones & Britton, LLP, files this Complaint against defendants T-N-T Carports, Inc. and George A. Simcox, stating as follows:

1. Plaintiff Mildred McCullough is an adult individual residing at 1033 Valley Road, West Decatur, Pennsylvania, 16878-9013.
2. Defendant T-N-T Carports, Inc. (hereinafter "TNT") is believed to be a corporation organized and existing under the laws of the State of North Carolina, and is qualified to do business in Pennsylvania, with its principle place of business at 2344 Turkey Ford Road, Mount Airy, North Carolina 27030.
3. At all times relevant to this dispute, defendant TNT was engaged in the business of designing, manufacturing, assembling, installing, distributing, selling and/or supplying metal carports. These carports were sold and marketed to the general public in Clearfield County and other counties across northwest and central Pennsylvania.

EXHIBIT

A

X2.2

4. Defendant George A. Simcox is an adult individual residing at 78 Arnoldstown Road, Curwensville, Pennsylvania, 16833-1618.

5. At all times relevant to this dispute, defendant Simcox was engaged in the business of distributing, selling and/or supplying the metal carports manufactured by defendant TNT.

6. In October 2002, plaintiff McCullough purchased a carport manufactured by defendant TNT and sold by defendant Simcox.

7. Plaintiff McCullough based her decision to purchase the carport on representations from both defendants that the product was fit for use in central Pennsylvania (hereinafter "the region"). Specifically, she relied on literature from defendant TNT which indicated that the carport could withstand heavy loads.

8. Employees and/or agents of defendant TNT installed the carport.

9. On February 3, 2004, after a moderate snowfall, the carport collapsed, causing substantial damage not only to itself but also to plaintiff McCullough's 2004 Ford Escape, which was parked beneath the carport.

10. The collapse occurred when the two (2) metal screws connecting the carport's collar tie and main bent sheared through the collar tie, causing the main bent to buckle under the weight of the accumulated snow. The screws were positioned only 1/4" from the connection of the collar tie and main bent. This distance was insufficient to prevent the screws from shearing through the collar tie.

11. The roof of the carport was comprised of ribbed metal sheets that ran the length of the structure and prohibited the accumulated snow from sliding off onto the ground.

12. At the time of the collapse, the snow load on the roof of the carport was approximately 15 psf (pounds per square foot). Roof structures in the region are required to support a minimum snow load of 21 psf. See Section 1608.5 of the Building Officials and Code Administrators Basic/National Property Maintenance Code (hereinafter "the BOCA Code").

13. Defendants TNT and Simcox either knew or should have known that the carport could not support normally expected snow loads for the region.

#### COUNT I

#### STRICT LIABILITY McCullough v. T-N-T Carports, Inc.

14. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 13 as if fully set forth herein.

15. Defendant TNT designed, manufactured, assembled, installed, sold and/or supplied the carport in an unreasonably dangerous and defective condition as described in Paragraphs 10 through 12 above.

16. Plaintiff McCullough received the carport in such defective condition, and at the time of the collapse, was using the carport in a reasonably foreseeable manner as intended by defendant TNT.

17. As a direct and proximate result of the defective condition of the carport, plaintiff Schlimm sustained damages in the amount of \$6,764.69, representing the cost to repair the vehicle upon which the carport collapsed.

18. Defendant TNT is strictly liable for such damages in any or all of the following respects:

- a. in failing to design, manufacture, assemble, install, distribute and/or sell the subject carport in an adequate and safe condition for its intended use;
- b. in designing, manufacturing, assembling, installing, distributing and/or selling the carport without adequate testing and/or inspection regarding its capacity to withstand normally expected snow loads for the region;
- c. in failing to warn and/or instruct plaintiff McCullough that the carport could not support normally expected snow loads for the region.

WHEREFORE, plaintiff McCullough demands judgment against defendant TNT in the amount of \$6,764.69 plus interest and costs of suit.

## COUNT II

### NEGLIGENCE

#### McCullough v. T-N-T Carports, Inc.

19. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 18 as if fully set forth herein.

20. All of the damages sustained by plaintiff McCullough resulted directly and proximately from the conduct of defendant TNT, which was negligent in any or all of the following respects:

- a. in failing to design, manufacture, assemble; install, distribute and/or sell the subject carport in an adequate and safe condition for its reasonably foreseeable use;
- b. in failing to design the carport to withstand normally expected snow loads for the region;
- c. in designing, manufacturing, assembling, installing, distributing and/or selling the carport without adequate testing and/or inspection regarding its capacity to withstand normally expected snow loads for the region;
- d. in failing to warn and/or instruct plaintiff McCullough that the carport could not support normally expected snow loads for the region;

- e. in failing to design the carport to withstand a snow load of 21 psf as required by section 1608.5 of the BOCA code.

WHEREFORE, plaintiff McCullough demands judgment against defendant TNT in the amount of \$6764.69 plus interest and costs of suit.

### COUNT III

#### BREACH OF WARRANTY McCullough v. T-N-T Carports, Inc.

21. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 20 as if fully set forth herein.

22. Defendant TNT expressly and/or impliedly warranted that the carport was merchantable and fit for a particular purpose.

23. Defendant TNT breached said warranties by selling, distributing and/or supplying the carport in a defective condition as described in Paragraphs 8 through 10 above.

24. As a direct and proximate result of defendant TNT's breach, plaintiff McCullough has sustained damages in the amount of \$7,713.79, representing the cost to replace the carport and to repair the vehicle upon which it collapsed.

WHEREFORE, plaintiff McCullough demands judgment against defendant TNT in the amount of \$7,713.79 plus interest and costs of suit.

COUNT IV

VIOLATIONS OF PENNSYLVANIA'S UNFAIR TRADE  
PRACTICES AND CONSUMER PROTECTION LAW  
McCullough v. T-N-T Carports, Inc.

25. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 24 as if fully set forth herein.

26. Defendant TNT, as a result of the conduct described above, has committed violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"). 73 P.S. §§ 201-1-209-6. Specifically, defendant TNT has violated the following subsections of 73 P.S. § 201-2(4):

(v) Representing that goods or services have . . . characteristics, ingredients, uses, benefits or quantities that they do not have . . . ;

. . . .

(vii) Representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model, if they are of another;

. . . .

(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.

27. 73 P.S. § 201-9.2 authorizes this Court to award up to three times plaintiff's actual damages.

WHEREFORE plaintiff McCullough demands judgment against defendant TNT in the amount of \$23,140.17 plus interest and costs of suit.

COUNT V

STRICT LIABILITY  
McCullough v. Simcox

28. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 27 as if fully set forth herein.

29. Defendant Simcox distributed, sold and/or supplied the carport in an unreasonably dangerous and defective condition as described in Paragraphs 10 through 12 above.

30. Plaintiff McCullough received the carport in such defective condition, and at the time of the collapse, was using the carport in a reasonably foreseeable manner as intended by defendant Simcox.

31. As a direct and proximate result of the defective condition of the carport, plaintiff McCullough sustained damages in the amount of \$6,764.69, representing the cost to repair the vehicle upon which the carport collapsed.

32. Defendant Simcox is strictly liable for such damages in any or all of the following respects:

- a. in failing to distribute, sell and/or supply the subject carport in an adequate and safe condition for its intended use;
- b. in distributing, selling and/or supplying the carport without adequate testing and/or inspection regarding its capacity to withstand normally expected snow loads for the region;
- c. in failing to warn and/or instruct plaintiff McCullough that the carport could not support normally expected snow loads for the region.

WHEREFORE, plaintiff McCullough demands judgment against defendant Skyline in the amount of \$6,764.69 plus interest and costs of suit.



COUNT VI

NEGLIGENCE

McCullough v. Simcox

33. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 32 as if fully set forth herein.

33. All of the damages sustained by plaintiff McCullough resulted directly and proximately from the conduct of defendant Simcox, who was negligent in any or all of the following respects:

- a. in failing to distribute, sell and/or supply the subject carport in an adequate and safe condition for its reasonably foreseeable use;
- b. in distributing, selling and/or supplying the carport without adequate testing and/or inspection regarding its capacity to withstand normally expected snow loads for the region;
- c. in failing to warn and/or instruct plaintiff McCullough that the carport could not support normally expected snow loads for the region.

WHEREFORE, plaintiff McCullough demands judgment against defendant Skyline in the amount of \$7,764.69 plus interest and costs of suit.

COUNT VII

BREACH OF WARRANTY  
McCullough v. Skyline Simcox

34. Plaintiff McCullough incorporates by reference all of the averments set forth in Paragraphs 1 through 33 as if fully set forth herein.

35. Defendant Simcox expressly and/or impliedly warranted that the carport was merchantable and fit for a particular purpose.

36. Defendant Simcox breached said warranties by selling, distributing and/or supplying the carport in a defective condition as described in Paragraphs 8 through 10 above.

37. As a direct and proximate result of defendant Simcox's breach, plaintiff McCullough has sustained damages in the amount of \$7,713.79, representing the cost to replace the carport and to repair the vehicle on top of which it collapsed.

WHEREFORE, plaintiff McCullough demands judgment against defendant Skyline in the amount of \$7,713.79 plus interest and costs of suit.

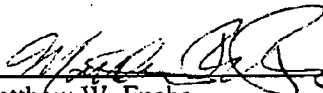
A JURY TRIAL IS DEMANDED AS TO ALL ISSUES

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document  
was served upon all other parties appearing  
of record by First-Class United States Mail  
sent on 7/22, 2004.



Respectfully submitted,

  
Matthew W. Fuchs  
MacDONALD, ILLIG, JONES & BRITTON LLP  
100 State Street, Suite 700  
Erie, Pennsylvania 16507-1459  
(814) 870-7612

Attorneys for Plaintiff  
Mildred McCullough

IN THE COURT OF COMMON PLEAS OF CLEARFIELD  
COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH  
Plaintiff

v.

T-N-T CARPORTS, INC. and GEORGE A.  
SIMCOX,  
Defendants

) CIVIL ACTION - LAW  
)  
)

) NO. 2004-01237-CD  
)  
)

VERIFICATION

I, Mildred McCullough, hereby depose and state that I am the plaintiff herein and that the averments set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. This Verification is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to intentional falsification to authorities.

Dated: 8/24/07

Mildred McCullough  
Mildred McCullough

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILDRED McCULLOUGH,

Plaintiff,

vs.

T-N-T CARPORTS, INC. and  
GEORGE A. SIMCOX,

Defendants.

CIVIL ACTION - LAW

No. 2004-01237-CD

**CERTIFICATE OF SERVICE**

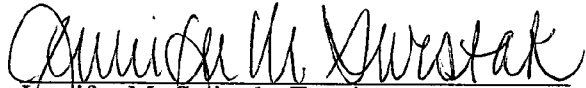
I, Jennifer M. Swistak, hereby certify that a true and correct copy of the within PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT IN CIVIL ACTION was served upon the Plaintiff's counsel of record and Defendant Simcox on the 12th day of November, 2004, by U.S. Mail, postage prepaid, at the following addresses:

Matthew W. Fuchs, Esquire  
MacDonald, Illig, Jones & Britton, LLP  
100 State Street, Suite 700  
Erie, PA 16507-1498  
(Attorney for Plaintiff)

George A. Simcox  
78 Arnoldstown Road  
Curwensville, PA 16833

Respectfully submitted,

DEER & ASSOCIATES



Jennifer M. Swistak, Esquire  
Attorney for Defendant,  
T-N-T Carports, Inc.

\_\_\_\_\_, J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH,

Plaintiff,

vs.

T-N-T CARPORTS, INC., and  
GEORGE A. SIMCOX,

Defendants.

CIVIL ACTION - LAW

NO. 2004-01237-CD

**PRAECIPE FOR WRIT TO JOIN  
ADDITIONAL DEFENDANT**

Filed on behalf of Defendant:  
T-N-T Carports, Inc.

Counsel of Record for this Defendant:

Robert W. Deer, Esquire  
Pa. I.D. No. 35174

Jennifer M. Swistak, Esquire  
PA I.D. No. 75959

DEER & ASSOCIATES  
Firm No. 103  
101 Smithfield Street  
Pittsburgh, PA 15222  
(412) 261-5771  
FAX (412) 232-0898

Counsel of Record for Plaintiff:

Matthew W. Fuchs, Esquire  
MacDonald, Illig, Jones & Britton,  
LLP  
100 State Street, Suite 700  
Erie, PA 16507-1498  
(814) 870-7600

**JURY TRIAL DEMANDED**

**FILED** NoCC

6K m/11:04 AM writ to  
JAN 21 2005 Any

William A. Shaw  
Prothonotary/Clerk of Courts





Jennifer M. Swistak, Esquire  
Attorney for Defendant,  
T-N-T Carports, Inc.

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

**WRIT TO JOIN ADDITIONAL DEFENDANT**

Mildred McCullough

Plaintiff(s)

Vs.

T-N-T Carports, Inc., and George A. Simcox  
Defendant(s)

2004-01237-CD

Vs.

Oscar Vargas d/b/a Vargas Installations  
Additional Defendant(s)

To: Oscar Vargas d/b/a Vargas Installations

You are notified that T-N-T Carports, Inc. has joined you as an additional defendant in this action, which you are required to defend.

Dated: January 21, 2005

\_\_\_\_\_  
Prothonotary

Filing Attorney: Jennifer M. Swistak, Esq.  
101 Smithfield Street  
Pittsburgh, PA 15222  
(412) 261-5771

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH,

Plaintiff,

vs.

T-N-T CARPORTS, INC., and  
GEORGE A. SIMCOX,

Defendants,

vs.

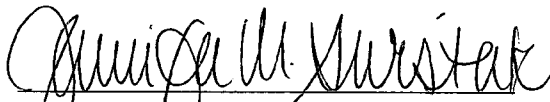
OSCAR VARGAS d/b/a VARGAS  
INSTALLATIONS,

Additional Defendant.

NOTICE TO PLEAD

TO: MILDRED MCCULLOUGH, PLAINTIFF,  
GEORGE SIMCOX, DEFENDANT, AND OSCAR  
VARGAS d/b/a VARGAS INSTALLATIONS,  
ADDITIONAL DEFENDANT

YOU ARE HEREBY NOTIFIED THAT YOU ARE  
REQUIRED TO FILE A RESPONSE TO THE WITHIN  
NEW MATTER WITHIN TWENTY (20) DAYS OF  
SERVICE ON YOU OR A JUDGMENT MAY BE  
ENTERED AGAINST YOU.

  
JENNIFER M. SWISTAK, ESQUIRE  
ATTORNEY FOR DEFENDANT

CIVIL ACTION - LAW

NO. 2004-01237-CD

**ANSWER, NEW MATTER AND  
NEW MATTER PURSUANT TO  
2252(D) TO AMENDED  
COMPLAINT**

Filed on behalf of Defendant:  
T-N-T Carports, Inc.

Counsel of Record for this Defendant:

Robert W. Deer, Esquire  
Pa. I.D. No. 35174

Jennifer M. Swistak, Esquire  
PA I.D. No. 75959

DEER & ASSOCIATES  
Firm No. 103  
101 Smithfield Street  
Pittsburgh, PA 15222  
(412) 261-5771  
FAX (412) 232-0898

Counsel of Record for Plaintiff:

Matthew W. Fuchs, Esquire  
MacDonald, Illig, Jones & Britton,  
LLP  
100 State Street, Suite 700  
Erie, PA 16507-1498  
(814) 870-7600

**JURY TRIAL DEMANDED**

64  
FILED  
m/11/13/04  
FEB 14 2005

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILDRED McCULLOUGH,

Plaintiff,

vs.

T-N-T CARPORTS, INC. and  
GEORGE A. SIMCOX,

Defendants,

vs.

OSCAR VARGAS d/b/a VARGAS  
INSTALLATIONS,

Additional Defendant.

CIVIL ACTION - LAW

No. 2004-01237-CD

**ANSWER, NEW MATTER AND NEW MATTER PURSUANT  
TO 2252(D) TO AMENDED COMPLAINT**

AND NOW, comes the Defendant, T-N-T Carports, Inc., by and through its attorneys, DEER & ASSOCIATES, Robert W. Deer, Esquire and Jennifer M. Swistak, Esquire, and files the within ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO 2252(D) TO AMENDED COMPLAINT, averring as follows:

1. The allegations set forth in paragraph one (1) of the Plaintiff's Amended Complaint are admitted.

2. The allegations set forth in paragraph two (2) of the Plaintiff's Amended Complaint are admitted in part and denied in part. It is admitted that the Defendant is a corporation organized and existing under the laws of the State of North Carolina. It is admitted that the Defendant is qualified to do business in Pennsylvania. The Defendant denies that its principle place of business is at 2344 Turkey Ford Road, Mount Airy, North Carolina 27030. The Defendant's actual principle place of business is at 1050 Worth Street, Mount Airy, North Carolina 27030.

3. The allegations set forth in paragraph three (3) of the Plaintiff's Amended Complaint are admitted in part and denied in part. It is admitted that the Defendant was in the

business of designing, manufacturing, distributing, selling and supplying metal carports. It is denied that the Defendant was in the business of assembling and installing metal carports. It is admitted that these carports were sold and marketed to the general public in Clearfield County and other counties across northwest and central Pennsylvania.

4. The allegations set forth in paragraph four (4) of the Plaintiff's Amended Complaint are admitted.

5. The allegations set forth in paragraph five (5) of the Plaintiff's Amended Complaint are admitted.

6. The allegations set forth in paragraph six (6) of the Plaintiff's Amended Complaint are admitted.

7. After reasonable investigation, the Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in paragraph seven (7) of the Plaintiff's Amended Complaint, and the same are therefore denied.

8. After reasonable investigation, the Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in paragraph eight (8) of the Plaintiff's Amended Complaint, and the same are therefore denied.

9. After reasonable investigation, the Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in paragraph nine (9) of the Plaintiff's Amended Complaint, and the same are therefore denied.

10. The allegations set forth in paragraph ten (10) of the Plaintiff's Amended Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, these allegations are denied.

11. The allegations set forth in paragraph eleven (11) of the Plaintiff's Amended Complaint are denied.

12. After reasonable investigation, the Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in paragraph twelve (12) of the Plaintiff's Amended Complaint, and the same are therefore denied.

13. After reasonable investigation, the Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in paragraph thirteen (13) of the Plaintiff's Amended Complaint, and the same are therefore denied.

14. The allegations set forth in paragraph fourteen (14) of the Plaintiff's Amended Complaint are admitted in part and denied in part. It is admitted that the roof of the carport is comprised of metal sheets that ran the length of the carport. It is denied that the roof of the carport prohibited accumulated snow from sliding off onto the ground.

15. To the extent that the allegations set forth in paragraph fifteen (15) of the Plaintiff's Amended Complaint contain conclusions of law, no response is required. As for the remaining allegations, after reasonable investigation, the Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of these allegations, and the same are therefore denied.

16. The allegations set forth in paragraph sixteen (16) of the Plaintiff's Amended Complaint are conclusions of law to which no response is required. To the extent that a response is necessary, these allegations are denied.

## **COUNT I**

### **STRICT LIABILITY** **McCullough v. T-N-T Carports, Inc.**

17. Paragraph seventeen (17) of the Plaintiff's Amended Complaint is an incorporation paragraph to which no response is required. To the extent that a response is necessary, the Defendant hereby incorporates by reference paragraphs one (1) through sixteen (16) of the within Answer is if the same were more fully set forth herein at length.

18. The allegations set forth in paragraph eighteen (18) of the Plaintiff's Amended Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, these allegations are denied.

19. The allegations set forth in paragraph nineteen (19) of the Plaintiff's Amended Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, these allegations are denied.

20. To the extent that the allegations set forth in paragraph twenty (20) of the Plaintiff's Amended Complaint contain conclusions of law to which no response is required. As for the remaining allegations, after reasonable investigation, the Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of these allegations, and the same are therefore denied.

21. The allegations set forth in paragraph twenty-one (21), including its component sub-parts (a) through (c), of the Plaintiff's Amended Complaint contain conclusions of law to which no response is required. To the extent a response is necessary, these allegations are denied.

WHEREFORE, the Defendant, T-N-T Carports, Inc., denies any and all liability and respectfully requests that this Honorable Court enter judgment in its favor and against the Plaintiff.  
JURY TRIAL DEMANDED.

## **COUNT II**

### **NEGLIGENCE**

#### **McCullough v. T-N-T Carports, Inc.**

22. Paragraph twenty-two (22) of the Plaintiff's Amended Complaint is an incorporation paragraph to which no response is required. To the extent that a response is necessary, the Defendant hereby incorporates by reference paragraphs one (1) through twenty-one (21) of the within Answer as if the same were more fully set forth herein at length.

23. The allegations set forth in paragraph twenty-three (23), including its component sub-parts (a) through (e), of the Plaintiff's Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, these allegations are denied.

WHEREFORE, the Defendant, T-N-T Carports, Inc., denies any and all liability and respectfully requests that this Honorable Court enter judgment in its favor and against the Plaintiff.  
JURY TRIAL DEMANDED.

### **COUNT III**

#### **BREACH OF WARRANTY** **McCullough v. T-N-T Carports, Inc.**

24. Paragraph twenty-four (24) of the Plaintiff's Amended Complaint is an incorporation paragraph to which no response is required. To the extent that a response is necessary, the Defendant hereby incorporates by reference paragraphs one (1) through twenty-three (23) of the within Answer as if the same were more fully set forth herein at length.

25. The allegations set forth in paragraph twenty-five (25) of the Plaintiff's Amended Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, these allegations are denied.

26. The allegations set forth in paragraph twenty-six (26) of the Plaintiff's Amended Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, these allegations are denied.

27. To the extent that the allegations set forth in paragraph twenty-seven (27) of the Plaintiff's Complaint contain conclusions of law, no response is required. As for the remaining allegations, after reasonable investigation, the Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of these allegations, and the same are therefore denied.



WHEREFORE, the Defendant, T-N-T Carports, Inc., denies any and all liability and respectfully requests that this Honorable Court enter judgment in its favor and against the Plaintiff.  
JURY TRIAL DEMANDED.

**COUNT IV**

**VIOLATIONS OF PENNSYLVANIA'S UNFAIR  
TRADE PRACTICES AND CONSUMER PROTECTION LAW**  
**McCullough v. T-N-T Carports, Inc.**

28. Paragraph twenty-eight (28) of the Plaintiff's Amended Complaint is an incorporation paragraph to which no response is required. To the extent that a response is necessary, the Defendant hereby incorporates by reference paragraphs one (1) through twenty-seven (27) of the within Answer is if the same were more fully set forth herein at length.

29. The allegations set forth in paragraph twenty-nine (29) of the Plaintiff's Amended Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, these allegations are denied.

30. The allegations set forth in paragraph thirty (30) of the Plaintiff's Amended Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, these allegations are denied.

31. The allegations set forth in paragraph thirty-one (31) of the Plaintiff's Amended Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, these allegations are denied.

32. The allegations set forth in paragraph thirty-two (32) of the Plaintiff's Amended Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, these allegations are denied.

33. The allegations set forth in paragraph thirty-three (33), including its component sub-parts, of the Plaintiff's Amended Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, these allegations are denied.

34. The allegations set forth in paragraph thirty-four (34) of the Plaintiff's Amended Complaint contain conclusions of law to which no response is required. To the extent that a response is necessary, these allegations are denied.

WHEREFORE, the Defendant, T-N-T Carports, Inc., denies any and all liability and respectfully requests that this Honorable Court enter judgment in its favor and against the Plaintiff.  
JURY TRIAL DEMANDED.

**COUNT V**

**STRICT LIABILITY**  
**McCullough v. Simcox**

35. Paragraph thirty-five (35) of the Plaintiff's Amended Complaint is an incorporation paragraph to which no response is required. To the extent that a response is necessary, the Defendant hereby incorporates by reference paragraphs one (1) through thirty-four (34) of the within Answer is if the same were more fully set forth herein at length.

36. Paragraphs thirty-six (36) through thirty-nine (39) of the Plaintiff's Amended Complaint are directed to Defendant Simcox and therefore no response is required from this Defendant.

WHEREFORE, the Defendant, T-N-T Carports, Inc., denies any and all liability and respectfully requests that this Honorable Court enter judgment in its favor and against the Plaintiff.  
JURY TRIAL DEMANDED.

**COUNT VI**

**NEGLIGENCE**  
**McCullough v. Simcox**

37. Paragraph forty (40) of the Plaintiff's Amended Complaint is an incorporation paragraph to which no response is required. To the extent that a response is necessary, the

Defendant hereby incorporates by reference paragraphs one (1) through thirty-six (36) of the within Answer is if the same were more fully set forth herein at length.

38. Paragraph forty-one (41) of the Plaintiff's Amended Complaint is directed to Defendant Simcox and therefore no response is required from this Defendant.

WHEREFORE, the Defendant, T-N-T Carports, Inc., denies any and all liability and respectfully requests that this Honorable Court enter judgment in its favor and against the Plaintiff.

JURY TRIAL DEMANDED.

## **COUNT VII**

### **BREACH OF WARRANTY** **McCullough v. Simcox**

39. Paragraph forty-two (42) of the Plaintiff's Amended Complaint is an incorporation paragraph to which no response is required. To the extent that a response is necessary, the Defendant hereby incorporates by reference paragraphs one (1) through thirty-eight (38) of the within Answer is if the same were more fully set forth herein at length.

40. Paragraphs forty-three (43) through forty-five (45) of the Plaintiff's Amended Complaint are directed to Defendant Simcox and therefore no response is required from this Defendant.

WHEREFORE, the Defendant, T-N-T Carports, Inc., denies any and all liability and respectfully requests that this Honorable Court enter judgment in its favor and against the Plaintiff.

JURY TRIAL DEMANDED.

## **NEW MATTER**

41. The Defendant hereby incorporates paragraphs one (1) through forty (40) of the within Answer as if same were more fully set forth herein at length.

42. The Plaintiff's claims are barred and/or limited by reason of and in accordance with the applicable statute of limitations.

43. The Plaintiff's claims are barred and/or limited by reason of impossibility of performance.

44. The Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

45. The Plaintiff's claims are barred and/or limited by reason of the economic loss doctrine.

46. To the extent that discovery so reveals, at all times material hereto, the Plaintiff or other third persons, parties, entities or corporations failed to properly maintain, use and/or care for the involved product described in the Plaintiff's Complaint.

47. The Plaintiff's damages, if any, were caused by an Act of God over which the Defendant had no control.

48. To the extent that discovery so reveals, the Plaintiff's damages, if any, were caused by superceding causes, including but not limited to the actions or inactions of the Plaintiff or other third persons, parties, entities or corporations for which the Defendant can be held neither responsible or liable.

49. The Plaintiff's damages, if any, were caused by the Plaintiff's failure to obtain proper authorizations, building permits and/or any other required permits for erection of the carport.

50. To the extent that the involved product described in the Plaintiff's Complaint was misused, abused, altered and/or in a condition substantially changed after it left the hands of the Defendant, the Defendant can be held neither responsible nor liable.

51. To the extent that discovery so reveals, the Defendant is not responsible for the Plaintiff's failure to mitigate the damages set forth in the Complaint.

52. To the extent that any damages allegedly sustained by the Plaintiff pre-existed the date of the incident, these damages are not recoverable in the within action.

53. The Defendant believes and therefore avers that the actions and/or inactions of the Plaintiff caused the alleged incident and/or were the sole cause of any alleged damages and, therefore, the Plaintiff's cause of action is barred and/or must be reduced by virtue of the Pennsylvania Comparative Negligence Act, 42 Pa.C.S.A. § 7102 and/or by the doctrine of assumption of the risk.

WHEREFORE, the Defendant, T-N-T Carports, Inc., denies any and all liability and respectfully requests that this Honorable Court enter judgment in its favor and against the Plaintiff.  
JURY TRIAL DEMANDED.

**NEW MATTER PURSUANT TO 2252(D)**

54. This Defendant hereby incorporates paragraphs one (1) through fifty-three (53) of the within Answer and New Matter as if same were more fully set forth herein at length.

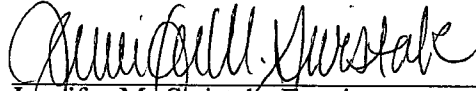
55. If, at the time of trial, this Defendant is found to be liable to the Plaintiff, a liability which is specifically denied, then this Defendant alleges solely for the purpose of these cross-claims and without admitting the same, that the conduct of the Co-Defendant, George A. Simcox, as more fully set forth in the Plaintiff's Complaint, was the sole joint, several, primary and/or proximate cause of the Plaintiff's damages. As grounds of liability against the Co-Defendant, and solely for the purpose of this Defendant's cross-claims and without admitting the same, this Defendant incorporates by reference the allegations of the Plaintiff's Complaint.

56. If, at the time of trial, this Defendant is found to be liable to the Plaintiff, a liability which is specifically denied, then and in that event, and in the alternative, this Defendant alleges that the Co-Defendant, George A. Simcox, and the Additional Defendant, Oscar Vargas d/b/a Vargas Installations, are solely and/or jointly liable to the Plaintiff, or in the alternative, are liable over to this Defendant for indemnification and contribution.

WHEREFORE, the Defendant, T-N-T Carports, Inc., denies any and all liability and respectfully requests that this Honorable Court enter judgment in its favor and against the Plaintiff, and in the alternative, against the Co-Defendant for contribution and indemnification. JURY TRIAL DEMANDED.

Respectfully submitted,

DEER & ASSOCIATES

A handwritten signature in cursive script, appearing to read "Jennifer M. Swistak", written over a horizontal line.

Jennifer M. Swistak, Esquire  
Attorney for Defendant,  
T-N-T Carports, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILDRED McCULLOUGH, )

Plaintiff,

vs.

T-N-T CARPORTS, INC. and  
GEORGE A. SIMCOX,

Defendants. )

CIVIL ACTION - LAW

No. 2004-01237-CD

**VERIFICATION**

I, Joan Belton, an authorized representative of T-N-T Carports, Inc., hereby depose and say that the facts set forth in the foregoing ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO 2252(D) are true and correct to the best of my knowledge and understanding. I understand that our statements are made subject to 18 Pa. C.S. ' 4904 relating to criminal penalties for unsworn falsifications to authorities.

2-3-05

Date

Joan Belton

Joan Belton  
Treasurer, T-N-T Carports, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILDRED McCULLOUGH,

Plaintiff,

vs.

T-N-T CARPORTS, INC. and  
GEORGE A. SIMCOX,

Defendants,

vs.

OSCAR VARGAS d/b/a VARGAS  
INSTALLATIONS,

Additional Defendant.

CIVIL ACTION - LAW

No. 2004-01237-CD

**CERTIFICATE OF SERVICE**

I, Jennifer M. Swistak, hereby certify that a true and correct copy of the within ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO 2252(D) TO AMENDED COMPLAINT was served by U.S. Mail, postage prepaid, on the 9th day of February, 2005, upon the following:

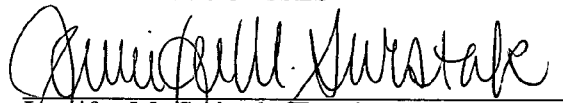
Matthew W. Fuchs, Esquire  
MacDonald, Illig, Jones & Britton, LLP  
100 State Street, Suite 700  
Erie, PA 16507-1498  
(Attorney for Plaintiff)

George A. Simcox  
78 Arnoldstown Road  
Curwensville, PA 16833

Oscar Vargas d/b/a Vargas Installations  
309 Maple Drive  
Mt. Airy, NC 27030

Respectfully submitted,

DEER & ASSOCIATES



Jennifer M. Swistak, Esquire  
Attorney for Defendant,  
T-N-T Carports, Inc.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD  
COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH,  
Plaintiff

v.

T-N-T CARPORTS, INC. and GEORGE A.  
SIMCOX,  
Defendants

v.

OSCAR Vargas d/b/a VARGAS  
INSTALLATIONS,  
Additional Defenfant.

) CIVIL ACTION - LAW  
)  
)

) NO. 2004-01237-CD  
)  
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**FILED**

M 10:58 AM NACL

6K FEB 17 2005

William A. Shaw  
Prothonotary

**REPLY TO NEW MATTER OF DEFENDANT T-N-T**

Plaintiff Mildred McCullough, by her attorneys, MacDonald, Illig, Jones & Britton, LLP, files this Reply to Defendant T-N-T's New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d), stating as follows:

41. Paragraph 41 is an incorporation paragraph to which no response is required.

42. The averments of paragraph 42 constitute legal conclusions to which no response is required. To the extent that a response may be required, the averments of paragraph 42 are denied.

43. The averments of paragraph 43 constitute legal conclusions to which no response is required. To the extent that a response may be required, the averments of paragraph 43 are denied.

44. The averments of paragraph 44 constitute legal conclusions to which no response is required. To the extent that a response may be required, the averments of paragraph 44 are denied.

45. The averments of paragraph 45 constitute legal conclusions to which no response is required. To the extent that a response may be required, the averments of paragraph 45 are denied.

46. The averments of paragraph 46 are denied.

47. The averments of paragraph 47 constitute legal conclusions to which no response is required. To the extent that a response may be required, the averments of paragraph 47 are denied.

48. The averments of paragraph 48 constitute legal conclusions to which no response is required. To the extent that a response may be required, the averments of paragraph 48 are denied.

49. The averments of paragraph 49 constitute legal conclusions to which no response is required. To the extent that a response may be required, the averments of paragraph 49 are denied.

50. The averments of paragraph 50 constitute legal conclusions to which no response is required. To the extent that a response may be required, the averments of paragraph 51 are denied.

51. The averments of paragraph 51 constitute legal conclusions to which no response is required. To the extent that a response may be required, the averments of paragraph 51 are denied.

52. The averments of paragraph 52 constitute legal conclusions to which no response is required. To the extent that a response may be required, the averments of paragraph 52 are denied.

53. The averments of paragraph 53 constitute legal conclusions to which no response is required. To the extent that a response may be required, the averments of paragraph 53 are denied.

WHEREFORE, plaintiff McCullough demands judgment against defendant T-N-T in the amount of \$23,140.17 plus interest and costs of suit.

**REPLY TO NEW MATTER PURSUANT TO Pa.R.C.P. 2252(d)**

54. Paragraph 54 is an incorporation paragraph to which no response is required.

55. The averments of paragraph 55 constitute legal conclusions to which no response is required. To the extent that a response may be required, the averments of paragraph 55 are denied.

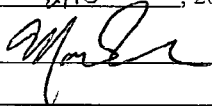
56. The averments of paragraph 55 constitute legal conclusions to which no response is required. To the extent that a response may be required, the averments of paragraph 55 are denied.

WHEREFORE, plaintiff McCullough demands judgment against defendant T-N-T in the amount of \$23,140.17 plus interest and costs of suit.

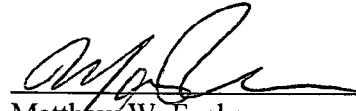
**A JURY TRIAL IS DEMANDED AS TO ALL ISSUES**

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document  
was served upon all other parties appearing  
of record by First-Class United States Mail  
sent on 2/15, 2005.



Respectfully submitted,



Matthew W. Fuchs  
MacDONALD, ILLIG, JONES & BRITTON LLP  
100 State Street, Suite 700  
Erie, Pennsylvania 16507-1459  
(814) 870-7612

Attorneys for Plaintiff  
Mildred McCullough

872569

IN THE COURT OF COMMON PLEAS OF CLEARFIELD  
COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH  
Plaintiff

v.

T-N-T CARPORTS, INC. and GEORGE A.  
SIMCOX,  
Defendants

) CIVIL ACTION - LAW  
)  
)  
) NO. 2004-01237-CD  
)  
)  
)

**ATTORNEY VERIFICATION**

Matthew W. Fuchs, Esquire, the undersigned, states that he is the attorney for Mildred McCullough, herein and that he is authorized to make this Verification on behalf of Mildred McCullough, that the facts set forth in the foregoing Reply to New Matter are true and correct, not of his own knowledge, but from information supplied to him, that the purpose of this Verification is to expedite the litigation, and that a Verification of Mildred McCullough will be supplied if demanded, all subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: 2/15/05

  
Matthew W. Fuchs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILDRED MCCULLOUGH,

Plaintiff,

vs.

T-N-T CARPORTS, INC., and  
GEORGE A. SIMCOX,

Defendants,

vs.

OSCAR VARGAS d/b/a VARGAS  
INSTALLATIONS,

Additional Defendant.

CIVIL ACTION - LAW

NO. 2004-01237-CD

**PRAECIPE TO SETTLE AND  
DISCONTINUE**

Filed on behalf of:  
Mildred McCullough, Plaintiff  
and T-N-T Carports, Defendant

Counsel of Record for Defendant:

Robert W. Deer, Esquire  
Pa. I.D. No. 35174

Jennifer M. Swistak, Esquire  
PA I.D. No. 75959

DEER & ASSOCIATES  
Firm No. 103  
101 Smithfield Street  
Pittsburgh, PA 15222  
(412) 261-5771  
FAX (412) 232-0898

Counsel of Record for Plaintiff:

Matthew W. Fuchs, Esquire  
MacDonald, Illig, Jones & Britton,  
LLP  
100 State Street, Suite 700  
Erie, PA 16507-1498  
(814) 870-7600

**FILED** <sup>(62)</sup> No CC  
MAY 11 2005  
MAY 02 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
Cert. of Disc.  
to Atty  
Swistak to Atty Fuchs  
Copy to CIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILDRED McCULLOUGH,

Plaintiff,

vs.

T-N-T CARPORTS, INC. and  
GEORGE A. SIMCOX,

Defendants,

vs.

OSCAR VARGAS d/b/a VARGAS  
INSTALLATIONS,

Additional Defendant.

CIVIL ACTION - LAW

No. 2004-01237-CD


**PRAECIPE TO SETTLE AND DISCONTINUE**

TO: WILLIAM SHAW, PROTHONOTARY

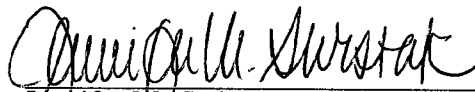
Kindly mark the above-referenced case SETTLED AND DISCONTINUED WITH  
PREJUDICE.

Respectfully submitted,

MACDONALD, ILLIG, JONES &  
BRITTON, LLP

  
Matthew W. Fuchs, Esquire  
Attorney for Plaintiff,  
Mildred McCullough

DEER & ASSOCIATES .

  
Jennifer M. Swistak, Esquire  
Attorney for Defendant,  
T-N-T Carports, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILDRED McCULLOUGH,

Plaintiff,

vs.

T-N-T CARPORTS, INC. and  
GEORGE A. SIMCOX,

Defendants,

vs.

OSCAR VARGAS d/b/a VARGAS  
INSTALLATIONS,

Additional Defendant.

CIVIL ACTION - LAW

No. 2004-01237-CD

**CERTIFICATE OF SERVICE**

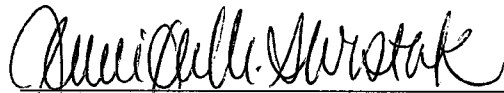
I, Jennifer M. Swistak, hereby certify that a true and correct copy of the within PRAECIPE  
TO SETTLE AND DISCONTINUE was served by U.S. Mail, postage prepaid, on the 28th  
day of April, 2005, by U.S. Mail, upon the following:

George A. Simcox  
78 Arnoldstown Road  
Currwensville, PA 16833-1618

Oscar Vargas  
Vargas Installations  
309 Maple Drive  
Mt. Airy, NC 27020

Respectfully submitted,

DEER & ASSOCIATES



Jennifer M. Swistak, Esquire  
Attorney for Defendant,  
T-N-T Carports, Inc.



IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Mildred McCullough

Vs.

No. 2004-01237-CD

T-N-T Carports, Inc.

George A. Simcox

Oscar Vargas

Vargas Installations

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on May 2, 2005, marked:

Settled and Discontinued with Prejudice

Record costs in the sum of \$85.00 have been paid in full by MacDonald, Illig, Jones & Britton, LLP.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 2nd day of May A.D. 2005.

---

William A. Shaw, Prothonotary