

05-99-CD

Penn Parts et al vs. Osceola Mills

v. OSCEOLA MILLS BOROUGH

Penn Parts et al v. Osceola Mills Borough  
2005-099-CD

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

PENN PARTS & SERVICE CO.,  
INC., t/d/b/a GROVE  
ENERGY,

Plaintiff,

vs.

OSCEOLA MILLS BOROUGH,  
Defendant.

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No. 05 - 99 - CD

Type of Pleading:

**COMPLAINT**

Filed on behalf of:

Plaintiff

Counsel of Record for

this party:

James A. Naddeo, Esq.

Pa I.D. 06820

207 E. Market Street

P.O. Box 552

Clearfield, PA 16830

(814) 765-1601

FILED

O 3:40 SA pd 8500

1CL to 8H

JAN 28 2005

William A. Shaw  
Prothonotary

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

PENN PARTS & SERVICE CO., \*  
INC., t/d/b/a GROVE \*  
ENERGY, \*  
Plaintiff, \*  
\*  
vs. \* No. 05 - - CD  
\*  
\*  
OSCEOLA MILLS BOROUGH, \*  
Defendant. \*

NOTICE

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

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

Court Administrator  
Clearfield County Courthouse  
Market and Second Streets  
Clearfield, PA 16830

(814) 765-2641, ext. 5982

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

PENN PARTS & SERVICE CO., \*  
INC., t/d/b/a GROVE \*  
ENERGY, \*  
Plaintiff, \*  
\*  
vs. \* No. 05 - - CD  
\*  
OSCEOLA MILLS BOROUGH, \*  
Defendant. \*

C O M P L A I N T

NOW COMES the Plaintiff, PENN PARTS & SERVICE CO.,  
INC., t/d/b/a GROVE ENERGY, and by its attorney, James A.  
Naddeo, Esquire, sets forth the following:

1. That the Plaintiff is Penn Parts & Service Co.,  
Inc., a Pennsylvania corporation, having its principal place of  
business located at 832 Sarah Street, Osceola Mills,  
Pennsylvania 16666.

2. That Grove Energy is a division of the Plaintiff  
engaged in general construction pursuant to a fictitious name  
registration, a copy of which is attached hereto as Exhibit "A".

3. That Defendant, Osceola Mills Borough, is a  
political subdivision having its principal place of business  
located at 155 Edwards Street, Osceola Mills, Pennsylvania  
16666.

4. That in August 2003 Defendant advertised  
specifications for the construction of a new Borough building,

which specifications had been prepared on behalf of the Borough by Plaintiff.

5. That Plaintiff submitted a bid in compliance with the specifications advertised by Defendant Borough to provide labor and materials for the sum of \$106,124.00, which bid was accepted by the Borough on September 27, 2003, as appears from the proposal attached hereto as Exhibit "B".

6. That Plaintiff commenced construction of the building in early October 2003.

7. That construction of the building was substantially completed on or about April 15, 2004.

8. That upon substantial completion of the building, Plaintiff relinquished possession of the building to Defendant for occupancy and use.

9. That during the course of construction, Defendant requested the Plaintiff to perform extra work which was not a part of the original contract specifications.

10. That specifically, Defendant requested Plaintiff to construct water lines, sewer lines and restroom pipe which Plaintiff bid at \$14.00 per linear foot for the water line, \$14.00 per linear foot for the sewer line and \$15.00 per linear foot for the restroom pipe.

11. That Plaintiff constructed 77 foot of water and sewer lines at \$14.00 per linear foot totaling \$1,078.00 and 33

foot of restroom pipe at \$15.00 per linear foot totaling \$450.00.

12. That to the date upon which Plaintiff relinquished possession of the building to Defendant, Defendant had paid to Plaintiff the sum of \$66,000.00 leaving a balance due to Plaintiff including extras of \$41,612.00.

13. That the parties developed a punch list of items to be corrected by Plaintiff, all of which were cosmetic and non-structural on or about February 2004.

14. That the reasonable value of correcting the cosmetic defects in the construction is \$4,810.00.

15. That Plaintiff has at all times been ready, willing and able to make the cosmetic corrections identified in the punch list generated by the parties.

16. That precedent to effecting the cosmetic corrections identified by the parties, Plaintiff requested that Defendant commit to a payment schedule which would afford Plaintiff the balance due for construction less a reasonable amount to secure the completion of the cosmetic repairs.

17. That Defendant refused to meet with Plaintiff or to make any further payment on the balance due to Plaintiff in the amount of \$41,612.00.

18. That upon information Plaintiff believes and therefore avers that Defendant employed an engineer to inspect the construction performed by Plaintiff

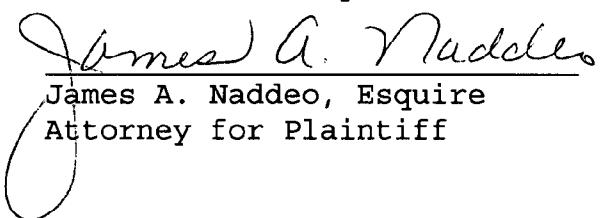
19. That upon information Plaintiff believes and therefore avers that said inspection occurred on or about June 7, 2004.

20. That upon information Plaintiff believes and therefore avers that said engineer provided Defendant with a list of cosmetic defects by report dated June 7, 2004.

21. That Plaintiff, through his counsel, directed a letter to Defendant dated September 21, 2004, offering to correct the items identified in the engineering report of June 7, 2004, upon the condition that Defendant pay to Plaintiff the amount due to him under the contract less the reasonable value of the repairs. A copy of said letter is attached hereto as Exhibit "C".

22. That Defendant has refused to pay to Plaintiff the balance due to it under the construction agreement or to permit Plaintiff to correct the alleged cosmetic defects in the construction.

WHEREFORE, Plaintiff demands judgment from Defendant in the amount of \$36,802 with interest from February 28, 2004.

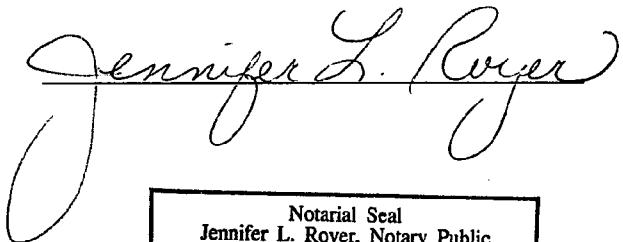
  
James A. Naddeo, Esquire  
Attorney for Plaintiff

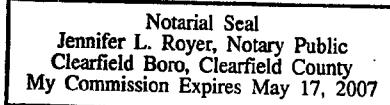
COMMONWEALTH OF PENNSYLVANIA )  
ss.  
COUNTY OF CLEARFIELD )

Before me, the undersigned officer, personally appeared ANDREW POLLOCK, who being duly sworn according to law, deposes and states that he is the President of Penn Parts & Service Co., Inc., and that as such officer he is authorized to execute this Affidavit and further that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

  
Andrew Pollock

SWORN and SUBSCRIBED before me this 20th day of January, 2005.

  
Jennifer L. Royer



200190-550

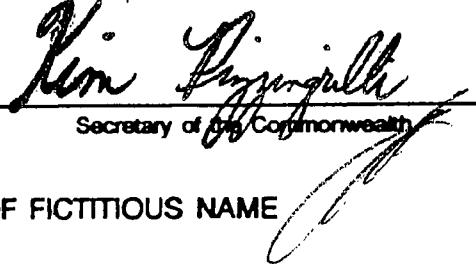
DSCB: 54:311 (Rev. 90).  
D. O. NALY COMPANY, PGH., PA 15219

NOV 21 2001

Microfilm Number \_\_\_\_\_

Filed with the Department of State on \_\_\_\_\_

Entity Number 3037204

  
Secretary of the Commonwealth

### APPLICATION FOR REGISTRATION OF FICTITIOUS NAME

In compliance with the requirements of 54 Pa.C.S. § 311 (relating to registration), the undersigned entity(ies) desiring to register a fictitious name under 54 Pa.C.S. Ch. 3 (relating to fictitious names), hereby state(s) that:

1. The fictitious name is: Grove Energy

2. A brief statement of the character or nature of the business or other activity to be carried on under or through the fictitious name is: retail sale of fossil fuels

3. The address, including number and street, if any, of the principal place of business of the business or other activity to be carried on under or through the fictitious name is (P.O. Box alone is not acceptable):

R. D. 1, Box 790E, Osceola Mills, PA 16666 Clearfield County

Number and Street

City

State

Zip

County

4. The name and address, including number and street, if any, of each individual interested in the business is:

Name \_\_\_\_\_ Number and Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

5. Each entity, other than an individual, interested in such business is (are):

Name \_\_\_\_\_ Form of Organization \_\_\_\_\_ Organizing Jurisdiction \_\_\_\_\_ Principal Office Address \_\_\_\_\_ Pa. Registered Office, if any \_\_\_\_\_

Penn Parts & Service Co. - corporation - R. R. 2, Box 152, Morrisdale,  
PA 16858

6. The applicant is familiar with the provisions of 54 Pa.C.S. § 332 (relating to effect of registration) and understands that filing under the Fictitious Names Act does not create any exclusive or other right in the fictitious name.

7. (Optional): The name(s) of the agent(s), if any, any one of whom is authorized to execute amendments to, withdrawals from or cancellation of this registration in behalf of all then existing parties to the registration, is (are):

PA DEPT. OF STATE

NOV 21 2001

EXHIBIT "A"

IN TESTIMONY WHEREOF, the undersigned have caused this Application for Registration of Fictitious Name to be executed this 19th day of November, XX 2001

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(Individual Signature)

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(Individual Signature)

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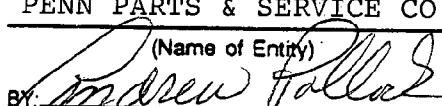
(Individual Signature)

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(Individual Signature)

PENN PARTS &amp; SERVICE CO.

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(Name of Entity)  
By: Andrew J. PollockTITLE: Pres.

---

(Name of Entity)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_



**PENN PARTS**  
Quality New & Used Parts & Equipment Sales



**Penn Truck  
Sales**

Sept. 3, 2003

Osceola Mills Borough  
Osceola Mills, PA 16666

**CONTRACTOR SUPPLIES**

1. Install power to sight under/below options: phone line under/below

NOTE: If power is not installed; the contractor will charge for generator to construct building.

2. Demolish concrete block and remove any large pieces from sight.

3. Bring in fill dirt to grade in area of building. Fill must be suitable for compaction. Pad is now 90 x 40 must be 135 x 70 at 2' average.

4. Dig and install water line.

5. Dig and install sewage line.

6. Rough in pipes for bathrooms and sinks.

7. Dig footers.

8. Pour footer using 2500 PSI concrete.

**EXHIBIT "B"**

9. Install styrofoam minimum 6" blocks.

10. Install forms for steel.

11. Contractor will supply large bolts for building.

12. Rebar placed in blocks and piers.

13. Floor drain piped to outside.

14. Pour concrete in blocks and forms using 3500 psi concrete.

15. Fine grade areas 125 x 60 with 2 RC stone to prep for concrete floor.

16. Compact all graded areas with vibrator roller.

17. Pour floor areas 125 x 60, grading all areas to drains using 3500 psi with fiber.

18. Cut expansion joints.

19. Floor must be finished with concrete finish.

20. Seal Floor with concrete sealer.

21. Supply persons and equipment to unload building upon arrival from manufacture.

22. Erect building as per engineers plans provided.

OWNER SUPPLIES

1. All permits required by state and local government.

WITNESS OR ATTESTED BY  
Penn Ports & Services G GROVE ENERGY.  
SUPPLIER  
President  
TITLE  
BY  
Andrew Palleck

ACCEPTED ON

ATTESTED BY:

Date Sept. 27, 03

Steddy Strum  
Secretary

by Bratton & Night, Inc.  
President

Eric B. Olla  
Vice President

TOTAL AMOUNT OF CONTRACT:

106,124<sup>00</sup>

#4	Price Per foot	\$14 <sup>00</sup>	WATER LINE
#5	" "	\$14 <sup>00</sup>	SEWER LINE
#6	" "	\$15 <sup>00</sup>	REST ROOM PIPE

JAMES A. NADDEO  
ATTORNEY AT LAW  
207 EAST MARKET STREET  
P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

ASSOCIATE  
LINDA C. LEWIS

(814) 765-1601  
FAX: (814) 765-8142  
[naddeolaw@charterinternet.com](mailto:naddeolaw@charterinternet.com)

September 21, 2004

Osceola Mills Borough  
P.O. Box 85  
Osceola Mills, PA 16666

Re: Grove Energy/Construction  
of Osceola Borough Building

Gentlemen:

I have been consulted by Grove Energy concerning the construction of the new Osceola Borough building. Grove Energy was the successful bidder for both labor and material for the construction of a new office building on behalf of Osceola Borough. Grove Energy commenced construction of this project on or about September/October 2003. The building was substantially completed by my client on or about April 2004.

Subsequent to delivery of possession of the new building, the Borough generated a punch list of items to be repaired and/or completed by the contractor. Grove Energy has always been ready, willing and able to complete the punch list upon condition that the balance due to my client under the terms of its bid is paid less the reasonable costs of completing the punch list. The balance due to Grove Energy at the time possession was relinquished to the Borough was \$41,612.00.

My client estimates that the reasonable cost to complete the punch list supplied to it by the Borough is \$4,810.00. Grove Energy will commence completion of the punch list immediately upon payment of \$36,802.00. Payment must be made within fifteen (15) days from the date of this letter failing which my client will commence suit to recover the amount due to it under the terms of its contract.

Sincerely,

James A. Naddeo

JAN/jlr

cc: Grove Energy  
Kim C. Kesner, Esquire

EXHIBIT "C"

**JAMES A. NADDEO**  
ATTORNEY AT LAW  
207 EAST MARKET STREET  
P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

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

PENN PARTS & SERVICE CO.,  
INC., t/d/b/a GROVE ENERGY,  
Plaintiff

vs.

OSCEOLA MILLS BOROUGH,  
Defendant

: No. 05-99-CD  
:  
: Type of Pleading: Defendant's Answer,  
: New Matter and Counterclaim(s)  
:  
: Filed on Behalf of: Defendant  
:  
: Counsel of Record for this Party:  
:  
: Kim C. Kesner, Esquire  
: Supreme Ct. I.D. 28307  
:  
: 23 North Second Street  
: Clearfield, PA 16830  
: 814-765-1706  
:  
: Other Counsel of Record:  
:  
: James A. Naddeo, Esquire  
: 207 E. Market Street  
: P.O. Box 552  
: Clearfield, PA 16830  
: 814-765-1601

FILED

64 FEB 17 2005  
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William A. Shaw  
Prothonotary/Clerk of Courts  
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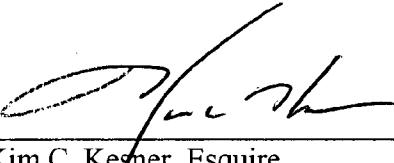
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PENN PARTS & SERVICE CO.,	:	No. 05-99-CD
INC., t/d/b/a GROVE ENERGY,	:	
Plaintiff	:	
	:	
vs.	:	
	:	
OSCEOLA MILLS BOROUGH,	:	
Defendant	:	

**NOTICE**

TO: Penn Parts & Service Co., Inc.  
t/d/b/a Grove Energy  
c/o James A. Naddeo, Esquire  
207 East Market Street  
P.O. Box 552  
Clearfield, PA 6830

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



---

Kim C. Kesner, Esquire  
Attorney for Defendant  
Supreme Ct. I.D. 28307  
23 North Second Street  
Clearfield, PA 16830  
(814) 765-1706

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

PENN PARTS & SERVICE CO.,	:	No. 05-99-CD
INC., t/d/b/a GROVE ENERGY,	:	
Plaintiff	:	
	:	
vs.	:	
	:	
OSCEOLA MILLS BOROUGH,	:	
Defendant	:	

**DEFENDANT'S ANSWER, NEW MATTER**  
**AND COUNTERCLAIM(S)**

AND NOW comes the Defendant, Osceola Mills Borough by its Solicitor, Kim C. Kesner, Esquire and in response to Plaintiff's Complaint, sets forth the following:

**Answer**

1. Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 1 of Plaintiff's Complaint. Proof thereof is demanded.
2. Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 2 of Plaintiff's Complaint. Proof thereof is demanded.
3. Admitted.
4. It is admitted that in or about August of 2003 Defendant advertised for bids for the site preparation for and erection of a one hundred twenty-five (125') foot by sixty (60') foot steel building previously purchased by Defendant from Plaintiff for use as the new Borough building.
5. Admitted.

6. Admitted.

7. It is specifically denied that construction of the building was substantially complete on or about April 15, 2004. To the contrary, at that time, there was substantial work to be performed to meet the bid specifications and/or the specifications of the manufacturer of the building, Heritage Building Systems and/or substantial and material defects of merchantability or fitness for intended purposes including roof leakage, condensation from moisture within the building and concrete deformities.

8. It is specifically denied that on or about April 15, 2004 Plaintiff relinquished possession of the building to Defendant for occupancy and use. To the contrary, at no point around that date or thereafter did Plaintiff communicate to Defendant that it was relinquishing possession of the building. Plaintiff never delivered all keys to the locks of the building to Defendant which required Defendant to purchase new locks and keys in December, 2004.

9. It is admitted that Defendant performed extra work not a part of the original contract specifications which was agreed to by the parties before any such work was performed.

10. Admitted.

11. Admitted.

12. It is admitted that Defendant paid Plaintiff the sum of Sixty-six Thousand (\$66,000.00) Dollars leaving a balance due under the contract and as agreed for those extras described in Paragraph 10 of Plaintiff's Complaint of Forty-one Thousand Six Hundred Twelve (\$41,612.00) Dollars. It is specifically denied that there is a balance due to Plaintiff of Forty-one Thousand Six Hundred Twelve (\$41,612.00) Dollars.

13. It is specifically denied that the parties jointly developed a punchlist of items to be corrected by Plaintiff all of which were cosmetic and nonstructural on or about February 2004.

To the contrary, in March of 2004, Defendant identified various uncompleted items and defects which Plaintiff acknowledged and agreed to remedy. Defendant engaged a consulting engineer to inspect, analyze and recommend remedies for Plaintiff's incomplete and defective performances. The consulting engineer rendered a report dated March 31, 2004 and a second report dated June 7, 2004 which identified some defects as cosmetic and repairable and others, including by way of illustration but not limitation, roof leakage, condensation from moisture within the building and concrete deformities to be substantial and structural problems.

14. It is specifically denied that the reasonable value of correcting Plaintiff's incomplete and defective performances is Four Thousand Eight Hundred Ten (\$4,810.00) Dollars. To the contrary, the following is the cost to remedy repairable defects:

a.	Seal fastners with silicone rubber	\$ 1,670.00
b.	Trim repair on front edges of building	\$ 450.00
c.	Repair front doors and seals	\$ 183.66
d.	Back door frame repair	\$ 45.00
e.	Repair of burn holes and welds	\$ 1,032.00
f.	Cleaning and painting steel	\$ 4,500.00
g.	Touch-up of trim to match exterior	\$ 180.00
h.	Patching and painting holes in panels	\$ 90.00
i.	Repair side door/left rear	\$ 880.00
j.	Repair ridge vent	\$ 1,920.00
k.	Installation of electrical service	<u>\$ 1,080.00</u>
	Total	\$12,030.66

By way of further answer, Plaintiff's incomplete and defective performances included failure to install a phone line(s) as required by the Contract. The cost to repair/remedy this is undetermined and unliquidated as of this date.

By way of further answer, the concrete floor was improperly cured by Plaintiff resulting in blistering and bubbling. Defendant believes and therefore avers that the cost to repair this defect would exceed Forty Thousand (\$40,000.00) Dollars. Also, Defendant avers that the following defects cannot be reasonably repaired without waste, but have substantially diminished the value of the building:

- a. "Oil canning" or bowing of the roof from use of inadequate fastners and excess roof insulation;
- b. Overlap or overflow of the building beyond the concrete foundation because the foundation provided is too small for the building and/or was not constructed in accordance with the specifications of the manufacturer, Heritage Building Systems.

Defendant believes and therefore avers that the cost to repair Defendant's incomplete and deficient performances and the diminution in value of the building exceed Forty-one Thousand Six Hundred Twelve (\$41,612.00) Dollars.

15. It is specifically denied that Plaintiff communicated a readiness, willingness or ability to repair defects that were remediable. To the contrary, by a letter dated June 30, 2004, Defendant provided Plaintiff with a copy of the June 7, 2004 report of the Defendant's consulting engineer and requested provision of a remediation plan within fourteen (14) days. Plaintiff provided no remediation plan in response. On July 15, 2004, Plaintiff acknowledged the request and promised a remediation plan but failed or refused thereafter to provide one. By

written correspondence dated July 27, 2004, Defendant advised Plaintiff that it had no choice but to retain another contractor to repair or remedy the deficiencies and cover the cost from contract amounts retained by Defendant. On or about August 2, 2004, trespassers obtained illegal entry to the building because of a back door latch defectively installed by Plaintiff and started fires in the building, cut and burned insulation and did other damage. By written correspondence dated August 3, 2003, Defendant requested Plaintiff to notify its casualty insurer of the losses. On that date and continuing thereafter, Plaintiff never provided Defendant all keys to the building and/or otherwise communicated to Defendant that Plaintiff had relinquished possession of the building. To the best of Defendant's knowledge, information and belief, Plaintiff thereafter failed or refused to notify its liability carrier of the losses. Plaintiff has never communicated a willingness to repair the vandalism damage. As a result, Defendant contracted for repair of these damages at its additional cost.

16. It is admitted that at Defendant's regular public meeting of February 16, 2004, Plaintiff appeared and requested that Defendant commit to a payment schedule.

17. It is specifically denied that Defendant has refused to meet with Plaintiff. To the contrary, Defendant as required by law conducts regular public business meeting which Plaintiff could have attended.

18. Admitted.

19. It is admitted that Defendant's consulting engineer inspected the building and Plaintiff's work on March 11, March 26 and June 3, 2004.

20. It is admitted that Defendant's consulting engineer rendered reports of the incomplete and defective performances by Plaintiff dated March 31, 2004 and June 7, 2004, copies of which were provided to Plaintiff.

21. It is admitted that the letter annexed to Plaintiff's Complaint as Exhibit "C" was directed by Plaintiff's counsel to Defendant. By way of further answer, the letter was sent after Plaintiff failed or refused to submit a remediation plan in response to a letter to it from Defendant's counsel dated June 30, 2004, after written correspondence from Defendant's counsel to Plaintiff dated July 27, 2004 advising Plaintiff that Defendant would retain another contractor to repair or remedy deficiencies and after Defendant's failure or refusal to respond to Defendant's request following the illegal entry and vandalism.

22. It is admitted that Defendant denies Plaintiff's claims for Thirty-six Thousand Eight Hundred Two (\$36,802.00) Dollars with interest.

WHEREFORE, Defendant demands judgment against Plaintiff in its favor and for dismissal of Plaintiff's Complaint.

**New Matter**

23. The averments contained in Paragraphs 1 through 22 of Defendant's Answer are incorporated herein by reference as if set forth verbatim.

24. Attached is a portion of Defendant's proposal and contract omitted from Exhibit "B" of Plaintiff's Complaint which required Plaintiff to provide a performance bond equal to one hundred (100%) percent of the contract for the full and faithful performance of the contract.

25. The Borough Code, 53 P.S. §46402 and the Public Works Contractors Bond Law of 1967, 8 P.S. §193(a)(1) required Plaintiff in this case to provide a performance bond at one hundred (100%) percent of the contract amount.

26. Plaintiff failed or refused to furnish a performance bond for this project.

27. As a matter of law, the Borough Code, 53 P.S. §46402(c) provides that a contract where the contractor fails to furnish a required performance bond is void.

28. By way of further defense, Defendant avers that its claims, which include but are not limited to those identified in Paragraph 14 above, exceed Plaintiff's prayer for relief.

WHEREFORE, Defendant demands judgment against Plaintiff in its favor and for dismissal of Plaintiff's Complaint.

**Counterclaim**

29. The averments contained in Paragraphs 1 through 22 of Defendant's Answer above and Paragraphs 23 through 28 of Defendant's New Matter are incorporated herein by reference as if set forth verbatim.

30. Defendant has suffered or will suffer the following damages as a direct and proximate cause of Plaintiff's breach of its agreement with Defendant and breach of its implied warranty of merchantability and fitness for particular purpose:

a.	Cost to repair deficiencies identified in Paragraph 14 above	\$12,030.66
b.	Cost to repair defective concrete	\$46,751.95
c.	Cost to repair/remedy failure to install phone line(s)	An unliquidated amount which Defendant believes and therefore avers does not exceed \$2,500.00.
d. Diminution in value of building from:		
i.	“Oil canning” or bowing of the roof from use of inadequate fastners and excess roof insulation;	
ii.	Overlap or overflow of the building beyond the concrete foundation because the foundation provided is too small for the building and/or was not constructed in accordance with the specifications of	

the manufacture, Heritage Building Systems.

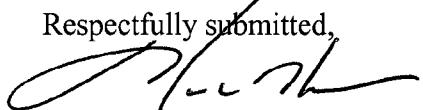
An unliquidated amount which Defendant believes and therefore avers does not exceed \$25,000.00.

31. Because of Plaintiff's breaches aforesaid, Defendant has also suffered the following damages and/or has incurred the following costs:

- a. Payment to G.M Jozefik Contracting for repair July 30, 2004 side door, \$ 50.00
- b. Payment to G.M. Jozefik Contracting for repair performed on September 1, 2004 including repair of vandalism damages, \$ 121.13
- c. Payment to G.M. Jozefik Contracting for work on December 5, 2004 for new locks and keys for small walk-in door adjacent to garage door, \$ 181.90
- d. Payment to G.M. Jozefik Contracting for work on December 20, 2004 for locks and keys to second side door and double doors in office, \$ 222.00
- e. Payment to G.M. Jozefik Contracting for work on December 21, 2004 for adjustment of garage door and installation of weather stripping, \$ 480.00
- f. Payment to Innovative Consulting Services in connection with core drilling of concrete, \$1,500.00

WHEREFORE, Defendant demands judgment against Plaintiff in the sum of Sixty-one Thousand Three Hundred Thirty-seven and 64/100 (\$61,337.64) Dollars damages and an unliquidated amount less than Twenty-five Thousand (\$25,000.00) Dollars.

Respectfully submitted,



Kim C. Kesner, Esquire  
Attorney for Defendant  
Supreme Ct. I.D. 28307  
23 North Second Street  
Clearfield, PA 16830  
(814) 765-1706

VERIFICATION

I, Betsy Mignot, President of Osceola Mills Borough Council, verify that the statements made in this Answer, New Matter and Counterclaim are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

Date: 2-17-2005

Betsy Mignot, Pres.  
Betsy Mignot, President  
Osceola Mills Borough Council

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

PENN PARTS & SERVICE CO., : No. 05-99-CD  
INC., t/d/b/a GROVE ENERGY, :  
Plaintiff :  
: :  
vs. :  
: :  
OSCEOLA MILLS BOROUGH, :  
Defendant :  
:

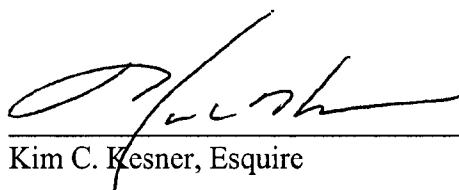
**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on the 17<sup>th</sup> day of February, 2004, I caused to be served a true and correct, time stamped copy of the Defendant's Answer, New Matter and Counterclaim to Plaintiff's Complaint, on the following and in the manner indicated below:

By United States Mail, Regular Mail, Addressed as Follows:

Penn Parts & Service Co., Inc.  
t/d/b/a Grove Energy  
c/o James A. Naddeo  
Attorney for Plaintiff  
207 East Market Street  
P.O. Box 552  
Clearfield, PA 16830

Date: 2/17/05

  
Kim C. Kesner, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100166  
NO: 05-99-CD  
SERVICE # 1 OF 1  
COMPLAINT

FILED  
O 2:47 p.m. GK  
FEB 23 2005

PLAINTIFF: PENN PARTS & SERVICE CO. INC. t/d/b/a GROVE ENERGY

vs.

DEFENDANT: OSCEOLA MILLS BOROUGH

6W

William A. Shaw  
Prothonotary

SHERIFF RETURN

NOW, January 28, 2005 AT 11:00 AM SERVED THE WITHIN COMPLAINT ON OSCEOLA MILLS BOROUGH DEFENDANT AT CORNER OF GERTRUDE & WALTON STS., PHILIPSUBRG, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO BEATRICE MIGNOT, AGENT FOR DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / HUNTER

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	NADDEO	10021	10.00
SHERIFF HAWKINS	NADDEO	10021	34.57

Sworn to Before Me This

23rd Day of feb. 2005

WILLIAM A. SHAW

Prothonotary

My Commission Expires  
1st Monday in Jan. 2006  
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins  
by Marilyn Harris

Chester A. Hawkins  
Sheriff

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

PENN PARTS & SERVICE CO.,  
INC., t/d/b/a GROVE ENERGY,  
Plaintiff

: No. 05-99-CD  
: Type of Pleading: Praeclipe

vs.

OSCEOLA MILLS BOROUGH,  
Defendant

: Filed on Behalf of: Defendant  
: Counsel of Record for this Party:  
: Kim C. Kesner, Esquire  
: Supreme Ct. I.D. 28307

: 23 North Second Street  
: Clearfield, PA 16830  
: 814-765-1706

: Other Counsel of Record:  
: James A. Naddeo, Esquire  
: 207 E. Market Street  
: P.O. Box 552  
: Clearfield, PA 16830  
: 814-765-1601

FILED <sup>cc</sup>  
03/12/2005 Atty Kesner  
MAR 10 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

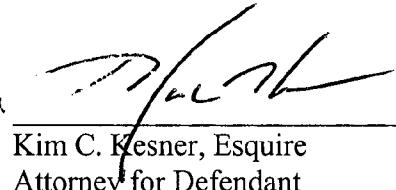
PENN PARTS & SERVICE CO.,	:	No. 05-99-CD
INC., t/d/b/a GROVE ENERGY,	:	
Plaintiff	:	
	:	
vs.	:	
	:	
OSCEOLA MILLS BOROUGH,	:	
Defendant	:	

**PRAECIPE**

To William A. Shaw, Prothonotary

Please accept for filing the attached which was intended to be the attachment referred to in Paragraph 24 of Defendant's New Matter which was inadvertently omitted from the pleading when filed.

Date: March 10, 2005



---

Kim C. Kesner, Esquire  
Attorney for Defendant  
Supreme Ct. I.D. 28307  
23 North Second Street  
Clearfield, PA 16830  
(814) 765-1706

PROPOSAL AND CONTRACT FOR  
Construction & Site Prep Sites for  
125' X 60' Steel Building

A. DEPOSITS OF PROPOSALS

1. All envelopes containing Bid Proposals shall be clearly marked "Bid Proposal for Letting of September 15, 2003" Sealed Proposals will be received on or before 8:00 PM., on the above letting date. Bids will be opened and read at approximately 8:15 PM., in the above letting date.
2. The municipality reserves the right to make an award on the basis of quotations received for any item.

Osceola Mills Borough

Gladys Straw

PO Box 85

Osceola Mills, PA 16666

B. CONTRACTOR'S CERTIFICATION

Proposal of  
Penn Parts & Service Co. Grove Energy.  
832 SARAH St. OSCEOLA MILLS PA. 16666  
(address)

1. It is hereby certified as follows:

- a. The only person (s) having an interest in this proposal is ;

Andrew Pollock

- b. None of the above persons are employees of the Municipality.

- c. This proposal is made without collusion with any other person, firm or corporation.

- d. All specifications referred to above have been examined by the suppliers. The supplier understands that the quantities indicated herein are approximate and are subject to change as may be required; and that all work is payable on the basis of the Unit prices listed on the schedule of prices (Attachment 1).

2. Accompanying this proposal is a certified check or bid bond in the amount of  made payable to the municipality, as a proposal guarantee which, it is understood, will be forfeited in case the supplier fails to comply with the requirements of the proposal.

3. The supplier will comply with all the requirements of the laws and implementing regulations of the Commonwealth of Pennsylvania and of the United States relating to human relations, equal opportunity and non-discrimination in employment, and will pay to workmen employed in the performance of the contract the wages to which they may be entitled and, when required by law, not less than the applicable prevailing wage.

4. Osceola Mills Borough does not discriminate or deny services on the basis of age, race, religion, color, national origin, sex and /or other disability. WBE/MBE

5. Successful bidder will provide a performance bond equal to 100% of the contract for the full and faithful performance of the contract.

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

PENN PARTS & SERVICE CO.,	:	No. 05-99-CD
INC., t/d/b/a GROVE ENERGY,	:	
Plaintiff	:	
	:	
vs.	:	
	:	
OSCEOLA MILLS BOROUGH,	:	
Defendant	:	

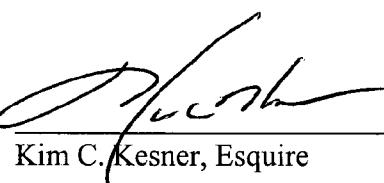
**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on the 10<sup>th</sup> day of March, 2005, I caused to be served a true and correct, time stamped copy of the attached Praeclipe, on the following and in the manner indicated below:

By United States Mail, Regular Mail, Addressed as Follows:

James A. Naddeo, Esquire  
Attorney for Plaintiff  
207 East Market Street  
P.O. Box 552  
Clearfield, PA 16830

Date: March 10, 2005



---

Kim C. Kesner, Esquire

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

PENN PARTS & SERVICE CO., \*  
INC., t/d/b/a GROVE \*  
ENERGY, \*  
Plaintiff, \*  
\*  
vs. \* No. 05 - 99 - CD  
\*  
OSCEOLA MILLS BOROUGH, \*  
Defendant. \*  
\*  
\*  
\* Type of Pleading:  
\*  
\* **ANSWER TO NEW MATTER**  
\* **AND COUNTERCLAIM**  
\*  
\* Filed on behalf of:  
\* Plaintiff  
\*  
\* Counsel of Record for  
\* this party:  
\*  
\*  
\* James A. Naddeo, Esq.  
\* Pa I.D. 06820  
\*  
\* 207 E. Market Street  
\* P.O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

FILED <sup>CC</sup>  
01/10/47/01 Atty Naddeo  
MAR 15 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

PENN PARTS & SERVICE CO., \*  
INC., t/d/b/a GROVE \*  
ENERGY, \*  
Plaintiff, \*  
\*  
vs. \* NO. 05 - 99 - CD  
\*  
OSCEOLA MILLS BOROUGH, \*  
Defendant. \*

ANSWER TO NEW MATTER AND COUNTERCLAIM

NOW COMES the Plaintiff, PENN PARTS & SERVICE CO.,  
INC., t/d/b/a GROVE ENERGY, and by its attorney, James A.  
Naddeo, Esquire, sets forth the following:

Answer to New Matter

23. No answer required.
24. States a conclusion of law to which no answer is required.
25. States a conclusion of law to which no answer is required.
26. Admitted in so far as it states that Plaintiff failed to furnish a performance bond for the project. It is denied, however, that he refused to provide a bond. On the contrary it is alleged that Defendant never demanded compliance with the bond provision.

27. States a conclusion to which no answer is required.

28. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

Answer to Counterclaim

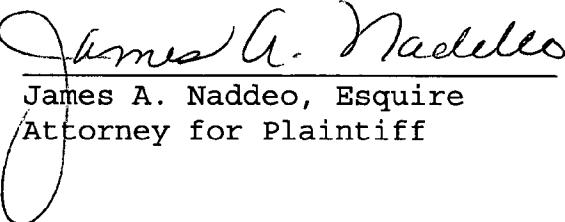
29. No answer required.

30. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment. In further answer thereto it is alleged that the installation of the phone lines was optional and therefore not required to be installed at Plaintiff's bid price.

31. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

WHEREFORE, Plaintiff requests judgment as set forth in his Complaint.

Respectfully submitted,

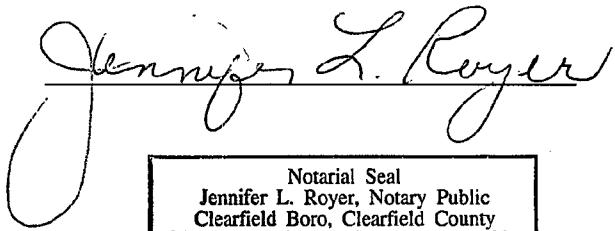
  
James A. Naddeo  
James A. Naddeo, Esquire  
Attorney for Plaintiff

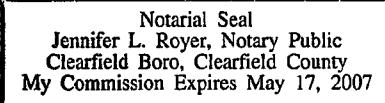
COMMONWEALTH OF PENNSYLVANIA )  
ss.  
COUNTY OF CLEARFIELD )

Before me, the undersigned officer, personally appeared ANDREW POLLOCK, who being duly sworn according to law, deposes and states that he is the President of Penn Parts & Service Co., Inc., and that as such officer he is authorized to execute this Affidavit and further that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief.

  
Andrew Pollock

SWORN and SUBSCRIBED before me this 4th day of March, 2005.

  
Jennifer L. Royer



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

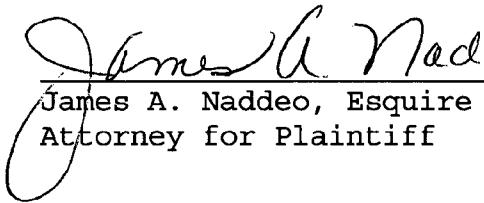
PENN PARTS & SERVICE CO., \*  
INC., t/d/b/a GROVE \*  
ENERGY, \*  
Plaintiff, \*  
\*  
vs. \* No. 05 - 99 - CD  
\*  
OSCEOLA MILLS BOROUGH, \*  
Defendant. \*

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Answer to New Matter and Counterclaim filed in the above-captioned action was served on the following person and in the following manner on the 15th day of March, 2005:

First-Class Mail, Postage Prepaid

Kim C. Kesner, Esquire  
23 North Second Street  
Clearfield, PA 16830

  
\_\_\_\_\_  
James A. Naddeo, Esquire  
Attorney for Plaintiff

**JAMES A. NADDEO**  
ATTORNEY AT LAW  
207 EAST MARKET STREET  
P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

---

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

PENN PARTS & SERVICE CO.,  
INC., t/d/b/a GROVE  
ENERGY,

Plaintiff,

vs.

OSCEOLA MILLS BOROUGH,  
Defendant.

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

No. 05 - 99 - CD

\*

\*

\*

\*

Type of Pleading:

\*

PRAECIPE TO SETTLE  
AND DISCONTINUE

\*

Filed on behalf of:

Plaintiff

\*

Counsel of Record for  
this party:

\*

\*

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

\*

207 E. Market Street  
P.O. Box 552  
Clearfield, PA 16830  
(814) 765-1601

FILED 1CC-1 Cert.  
013:45 AM Of Disc-40  
JAN 11 2006 Atty  
William A. Shaw  
Prothonotary/Clerk of Courts  
Copy to CIA

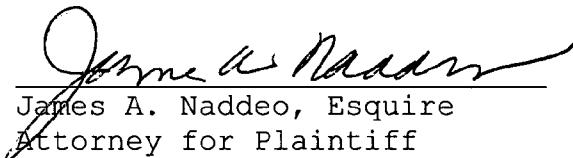
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

SHIRLEY H. SPAID, \*  
Plaintiff,  
\*  
v. \* No. 05-1277-CD  
CHARLES E. SPAID, \*  
Defendant. \*

**PRAECIPE TO SETTLE AND DISCONTINUE**

TO THE PROTHONOTARY:

Please mark the above-captioned case settled and discontinued.

  
\_\_\_\_\_  
James A. Naddeo, Esquire

Attorney for Plaintiff

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

PENN PARTS & SERVICE CO., \*  
INC., t/d/b/a GROVE \*  
ENERGY, \*  
Plaintiff, \*  
\*  
vs. \* No. 05 - 99 - CD  
\*  
OSCEOLA MILLS BOROUGH, \*  
Defendant. \*

**CERTIFICATE OF SERVICE**

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Praecipe Settle and Discontinue filed in the above-captioned action was served on the following person and in the following manner on the 11th day of January, 2006:

First-Class Mail, Postage Prepaid

Kim C. Kesner, Esquire  
23 North Second Street  
Clearfield, PA 16830

  
\_\_\_\_\_  
James A. Naddeo, Esquire  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CCPY

**Penn Parts & Service  
Grove Energy**

**Vs.** **No. 2005-00099-CD**  
**Osceola Mills Borough**

**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 January 11, 2006, marked:

Settled and Discontinued

Record costs in the sum of \$85.00 have been paid in full by James A. Naddeo, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 11th day of January A.D. 2006.

---

William A. Shaw, Prothonotary

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

PENN PARTS & SERVICE CO., :  
INC., t/d/b/a GROVE ENERGY, :  
Plaintiff :  
vs. : No. 05-99-CD  
OSCEOLA MILLS BOROUGH, :  
Defendant :  
: Type of Pleading: Praecipe to Settle  
: and Discontinue  
: Filed on behalf of: Defendant  
: Counsel of Record for Defendant:  
: Kim C. Kesner, Esquire  
: Supreme Ct. I.D. 28307  
: 23 North Second Street  
: Clearfield, PA 16830  
: (814) 765-1706  
: Counsel of Record for Plaintiff:  
: James A. Naddeo, Esquire  
: Supreme Ct. I.D. 06820  
: 207 East Market Street  
: Clearfield, PA 16830  
: (814) 765-1601  
:  
:  
:

FILED *cc*  
*01/31/06 Atty Kesner*  
FEB 02 2006 *(6)*

William A. Shaw  
Prothonotary/Clerk of Courts

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

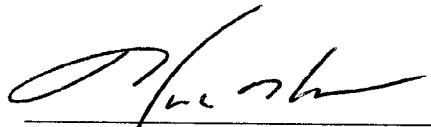
PENN PARTS & SERVICE CO., :  
INC., t/d/b/a GROVE ENERGY, :  
Plaintiff :  
: :  
vs. : No. 05-99-CD  
: :  
OSCEOLA MILLS BOROUGH, :  
Defendant :  
:

**PRAECIPE TO SETTLE AND DISCONTINUE**

TO THE PROTHONOTARY:

Please mark Osceola Mills Borough's Counterclaim in the above-captioned action settled  
and discontinued.

Date: 2/2/06

  
\_\_\_\_\_  
Kim C. Kesner, Esquire  
Attorney for Defendant