

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

DUBOIS MEDICAL SUPPLY
COMPANY, INC.,

Plaintiff

vs.

KATHRYN SILVESTER,
Defendant

No. 05-1116-CD

Type of Pleading:

COMPLAINT IN EQUITY

Filed on Behalf of:

PLAINTIFF

Counsel of Record for
This Party:

Anthony S. Guido, Esq.
Supreme Court No. 05877
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

814-371-7768

Date: _____

FILED 1CC SHF
018:53/01 1CC Atty
AUG 02 2005
William A. Shaw
Prothonotary, Clerk of Courts
85 00

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

DUBOIS MEDICAL SUPPLY,
COMPANY, INC.,

Plaintiff

vs.

KATHRYN SILVESTER,

Defendant

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No. _____, 2005, C.D.

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 defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed 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
Second & Market Streets
Clearfield, PA 16830

(814) 765-2641 Ext. 1300

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

DUBOIS MEDICAL SUPPLY,
COMPANY, INC.,

Plaintiff

vs.

KATHRYN SILVESTER,

Defendant

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No. _____, 2005, C.D.

COMPLAINT IN EQUITY

AND NOW, comes the Plaintiff, DUBOIS MEDICAL SUPPLY COMPANY, INC., by and through their attorneys, HANAK, GUIDO AND TALADAY, and files this Complaint and in support thereof aver the following:

1. Plaintiff, DUBOIS MEDICAL SUPPLY COMPANY, INC., is a corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal office located at 320 Liberty Blvd., DuBois, Clearfield County, Pennsylvania.

2. The Defendant, KATHRYN SILVESTER, is an adult individual who has a mailing address of 1175 Foster Road, Beaver Falls, Beaver County, Pennsylvania.

COUNT I

3. Paragraphs 1 and 2 are incorporated herein by reference as though the same were set forth more fully at length.

4. Venue in this court is proper under Pa.R.C.P. 1006, 2130 and 2179(a) in that the Plaintiff's principal place of business is located in the City of DuBois, Clearfield County, Pennsylvania.

5. Defendant was employed by the Plaintiff on or about February 26, 2003, and was assigned by the Plaintiff to act as a customer service representative in the business known as Beaver Respiratory Care which the Plaintiff operates under a duly filed fictitious name.

6. Pursuant to her employment, Defendant executed an Agreement dated February 27, 2003, which is fully supported by adequate consideration. A true and correct copy of said Agreement is attached hereto and marked as Exhibit "A".

7. Throughout her employment, Defendant has acted as a customer service representative as previously averred.

8. On or about the 29th day of June, 2005, the Defendant resigned her position with the Plaintiff and in turn accepted employment with John C. Rezk, trading and doing business as Rezk Medical Supply with offices in Carrolltown in Cambria County, and Beaver in Beaver County, Pennsylvania.

9. Said Agreement dated February 27, 2003, copy of which is attached hereto as Exhibit "A", provides in part that throughout the term of her employment and that for a period of one year thereafter, within a territory of 40 miles in radius of any present or future offices

or location of Plaintiff, Defendant agreed to not individually or in conjunction with any other person or as an employee, agent, representative or partner or holder of any interest in any firm, corporation or other association engage in any business which would be in competition with the Plaintiff's business.

10. In violation of Section 4, entitled "Restrictions Against Competition" since her resignation on June 29, 2005, the Defendant, engaged in employment and activities related to the employment with John C. Rezk, trading as Rezk Medical Supply in violation of said agreement dated February 27, 2003, a copy of which is attached hereto and marked Exhibit "A".

11. Should the Court grant injunctive relief to Plaintiff, Defendant will incur little, if any, injury for which injury she has adequate remedies at law. The balance of equities therefore favor Plaintiff.

12. In addition to injunctive relief, hearing requested, the Plaintiff further requests that your Honorable Court enter judgment in the amount of the attorney's fees and costs expended by the Plaintiff in prosecuting this action pursuant to Subsection (b) of Paragraph 5, entitled "Remedies of Said Agreement" dated February 27, 2003.

13. Plaintiff also seeks an Order pursuant to Pa.R.C.P. 115.31 preliminary and permanently enjoining Defendant from violating the covenants of said Agreement dated February 27, 2003.

14. If required by the Court, Plaintiff will deposit money or bond with the Court in whatever amount the Court may determine is just for

security. It is believed that only irreparable harm that would be caused to the Plaintiff since the Defendant is engaging in activities in competition with Plaintiff's business and in violation of said agreement dated February 27, 2003. Thus the amount of any security bond should be merely nominal.

15. Should the Court not grant injunctive relief, the Plaintiff believes and therefore avers that it will incur great and irreparable harm and damage from the permanent loss due to Defendant's violations of the terms and conditions of said Agreement dated February 27, 2003.

WHEREFORE, Plaintiff requests that this Court enter an Order:

(a) Permanently enjoining Defendant from violating the terms of said Agreement dated February 27, 2003;

(b) Enjoin Defendant from competing with Plaintiff in the business of the Plaintiff for a period of one year in the protected territory as provided for by said agreement dated February 27, 2003;

(c) Award Plaintiff's costs incurred as a result of Defendant's wrongful act;

(d) Awarding Plaintiff reasonable attorney's fees for prosecuting this action;

(e) Providing such other relief as the Court deems just and proper.

COUNT II

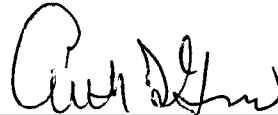
Unjust Enrichment

16. Paragraphs 1 through 15 are incorporated herein by reference as though the same were set forth more fully at length.

17. As a result of Defendant competing with Plaintiff in violation of said Agreement dated February 27, 2003, such actions will confer upon Defendant benefits which are unjust to the detriment of Plaintiff.

18. Defendant's actions constitute an unjust retention of a benefit to the loss of the Plaintiff will cause Plaintiff to suffer serious financial injury and inequities as a result that have or probably will in the future result in substantial damages.

WHEREFORE, Plaintiff demands judgment against the Defendant in the amount Defendant has received as a result of Defendant's wrongful acts as set forth in the Count I of this Complaint.



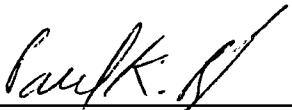
Anthony S. Guido
Attorney for Plaintiffs

VERIFICATION

I, PAUL K. REZK, President of DuBOIS MEDICAL SUPPLY COMPANY, INC., do hereby state that I am the authorized agent for purposes of filing this Complaint. The statements therein are correct to the best of my personal knowledge, information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 7-28-05



Paul K. Rezk, President

AGREEMENT

THIS AGREEMENT, made this 27 day of FEBRUARY, 2003, by and between DUBOIS MEDICAL SUPPLY, INC., a business corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with an office and place of business at 405 East Sheridan Avenue, DuBois, Pennsylvania, party of the first part, hereinafter referred to as the "COMPANY"

-AND-

Kathryn Silvester of Beaver Falls, Pa. Beaver County Pennsylvania, party of the second part, hereinafter referred to as "EMPLOYEE".

1. Identification of Parties. Whenever in this Agreement the terms "you" or "your" are used, reference is being made to you, the Employee. Whenever the term "Company" is used, reference is being made to DuBois Medical Supply, Inc., and all of its successors and assigns.

2. Consideration for Agreement. In consideration of your employment as a Customer Service Rep and the agreed-upon compensation, the sufficiency of which you hereby acknowledge, you agree to all of the terms and conditions contained in this Agreement.

As additional consideration for this Agreement, Employee acknowledges being a new hired employee or if a present employee, a compensation increase.

3. Agreement Not to Disclose Confidential Information.

(a) You acknowledge that the following items (collectively referred to as "confidential information") used in the Company's business are secret, confidential, unique, and valuable, were developed by the Company at great cost and over a long period of time, and that disclosure or use of the Company's confidential information to or by anyone other than the Company's officers, agents, or authorized employees will cause company irreparable injury. The Company's confidential information includes:

(i) Client lists, prospect call lists, and other customer data;

(ii) Price lists, vendor lists, computer printouts, account receivable reports, revenue reports and similar financial information;

(iii) Proposals, contracts, leases, rental agreements, and marketing information;

(iv) Employee lists; and

(v) Such other Company information designated as confidential, propriety, and/or trade secret to which you gain access during your employment.

(b) Except as required in the performance of your duties as an Employee of the Company, you agree not to disclose to anyone the Company's confidential information, whether such information is developed before or after the date of this Agreement.

(c) The restrictions against disclosure contained in this Agreement apply during and after your employment with the Company.

(d) The restrictions against disclosure contained in this Agreement also apply to confidential information developed by you while employed by the Company.

(e) Upon termination of your employment for any reason, you will promptly deliver to the Company all tangible objects containing confidential information, including all copies thereof, whether prepared by you or others, that you possess or have under your control.

4. Restrictions Against Competition.

(a) You agree that throughout the term of your employment with the Company and for a period of 1 years thereafter, within a territory of 40 miles in radius, of any present or future offices or locations of the Company, you will not, individually or in conjunction with any other person, or as an employee, agent, representative, partner, or holder of any interest in any other person, firm, corporation, or other association:

(i) Solicit, entice, induce any person, firm, or corporation, who or which at any time during your employment with the Company was a customer of the Company, to become a client or customer of any other person, firm, or corporation, or other association;

(ii) Authorize or direct any person, firm, or corporation to solicit, entice or induce any person, firm or

corporation, who or which at any time during your employment with the Company was a customer of the Company, to become a customer of any other person, firm or corporation, or other association;

(iii) Solicit, entice, or induce any person who presently is or at any time during your employment with the Company will be, an employee of the Company, to become employed by any other person, firm, corporation, or other association, and you shall not approach any such employee for such purpose or authorize or direct the taking of such actions by any other person;

(iv) Directly or indirectly solicit, participate in, or accept business similar to any aspect of the Company's business from any person, firm, or other association, who or which was a customer or prospect of the Company during your employment with the Company and with whom you had business contact while employed by the Company, "Business Contact" for these purposes shall include your telephonic, written and/or face to face business communication with representatives of the customer or prospect.

Nothing in the foregoing shall prohibit you, after termination of your employment with the Company from engaging in any business that is not in competition with the Company. At no time during or after your employment by the Company shall you be prohibited from investing in the securities of any corporation having securities listed on a national security exchange, provided that such investment does not exceed five percent of any class of securities of any corporation engaged in business in competition with the Company, and provided

that such ownership represents a passive investment and that neither you nor any group of persons including you, in any way, either directly or indirectly, manages or exercises control over any such corporation, guarantees any of its financial obligations, or otherwise takes part in its business, except in the exercise of your rights as a shareholder.

5. Remedies.

(a) You acknowledge that the restrictions contained in this Agreement are reasonable and necessary in view of the nature of the Company's businesses and in order to protect the legitimate business interests of the Company. You further acknowledge that your violation of the restrictions, or any of them, would result in irreparable injury to the Company. Therefore, you agree that, in the event of a breach or threatened breach by you of the provisions of Paragraphs 3 or 4 of this Agreement, the Company shall be entitled to obtain from any court of competent jurisdiction, preliminary and permanent injunctive relief restraining you from any violation of Paragraphs 3 or 4 of this Agreement.

(b) You further agree that if the Company institutes legal action to enforce any provision of this Agreement, you will pay the Company's attorney's fees and litigation costs incurred in enforcing the Agreement.

(c) Nothing herein shall be construed as prohibiting the Company from pursuing any other remedies available to the Company for a breach or threatened breach of this Agreement.

(d) The parties acknowledge their intention that the Company shall have the broadest possible protection of the value of the Company's business, consistent with public policy. Should a court determine that the durational or geographical restrictions on post-employment competition are broader than public policy allows, the parties agree to accept whatever the court (duration or geographic scope) finds to be permissible under public policy.

6. Survival. The provisions of Paragraphs 3, 4, and 5 shall survive the termination of your employment, regardless of the reason for termination.

7. Miscellaneous.

(a) This Agreement cancels and supersedes any and all prior agreements and understandings between or among you and the Company with respect to your employment with the Company. This Agreement may not be modified in any respect except in a writing signed by the parties hereto.

(b) All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, except that your duties and responsibilities hereunder are of a personal nature and shall not be assignable or delegatable, in whole or in part, by you.

8. Severability. In the event that any provision(s) of this Agreement are deemed invalid, unreasonable or unenforceable by any court of competent jurisdiction, such provision(s) shall be stricken

from the Agreement or modified so as to render it reasonable, and the remaining provisions of this Agreement or the modified provision as provided above shall continue in full force and effect and be binding upon the parties.

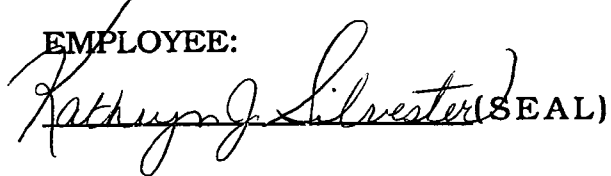
9. Controlling Law. The validity, interpretation, construction, performance, and enforcement of this agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date set forth above the day and year first above written.

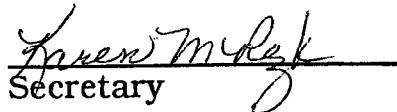
WITNESSES:



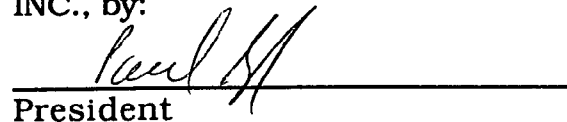
EMPLOYEE:

 (SEAL)

Attest:


Secretary

DUBOIS MEDICAL SUPPLY
INC., by:


President

DUBOIS MEDICAL SUPPLY
COMPANY, INC.,

Plaintiff,

vs.

KATHRYN SILVESTER,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: CIVIL ACTION - LAW
: No. 05-1116-CD
:
:
:

ENTRY OF APPEARANCE

COUNSEL OF RECORD FOR PARTY:

: JAMES A. NADDEO, ESQUIRE
: I.D. No.: 06820
: 211 EAST LOCUST STREET
: POST OFFICE BOX 552
: CLEARFIELD, PENNSYLVANIA 16830
: (814) 765-1601

FILED 3cc
013:4:24 Amy
AUG 31 2005 Naddeo
William A. Shaw
Prothonotary/Clerk of Courts

DUBOIS MEDICAL SUPPLY : IN THE COURT OF COMMON PLEAS OF
COMPANY, INC., : CLEARFIELD COUNTY, PENNSYLVANIA
 : CIVIL ACTION - LAW
Plaintiff, :
 : No. 05-1116-CD
 :
vs. :
 :
KATHRYN SILVESTER, :
 :
Defendant :

ENTRY OF APPEARANCE

Enter our appearance for Defendant, Kathryn Silvester only in the above-captioned case. Papers may be served at the address stated below.

DEMAND FOR JURY TRIAL

Pursuant to Rule 1007.1 of the Pennsylvania Rules of Civil Procedure, as amended, a Jury Trial is demanded on all issues raised by the pleadings in the above-captioned action.

We certify that this entry of Appearance and Demand for Jury Trial shall be served forthwith by ordinary mail upon all parties.

James A. Naddeo, Esquire
211 East Locust Street
Post Office Box 552
Clearfield, Pennsylvania 16830

By James A. Naddeo
James A. Naddeo, Esquire
Attorneys for Defendant,
Kathryn Silvester

DATED: August 29, 2005
cc: Ronald P. Carnevali, Jr., Esquire
Anthony S. Guido, Esquire
Ms. Kathryn Silvester
Mr. John C. Rezk

DUBOIS MEDICAL SUPPLY
COMPANY, INC.,

Plaintiff,

vs.

KATHRYN SILVESTER,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: CIVIL ACTION - LAW
: No. 05-1116-CD

: ENTRY OF APPEARANCE

: **COUNSEL OF RECORD FOR PARTY:**

: RONALD P. CARNEVALI, JR., ESQUIRE
: I.D. No.: 47733
: SPENCE, CUSTER, SAYLOR, WOLFE &
: ROSE, LLC
: AMERISERV FINANCIAL BUILDING
: POST OFFICE BOX 280
: JOHNSTOWN, PENNSYLVANIA 15907
: (814) 536-0735

FILED 3cc
0134/01 Amy Madder
AUG 31 2005 (SK)

William A. Shaw
Prothonotary/Clerk of Courts

DUBOIS MEDICAL SUPPLY : IN THE COURT OF COMMON PLEAS OF
COMPANY, INC., : CLEARFIELD COUNTY, PENNSYLVANIA
 : CIVIL ACTION - LAW
Plaintiff, :
 : No. 05-1116-CD
 :
vs. :
 :
KATHRYN SILVESTER, :
 :
Defendant :

ENTRY OF APPEARANCE


Enter our appearance for Defendant, Kathryn Silvester only in the above-captioned case. Papers may be served at the address stated below.

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We certify that this entry of Appearance and Demand for Jury Trial shall be served forthwith by ordinary mail upon all parties.

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC
AmeriServ Financial Building
Post Office Box 280
Johnstown, Pennsylvania 15907

By 
Ronald P. Carnevali, Jr., Esquire
Attorneys for Defendant,
Kathryn Silvester

DATED: August 29, 2005
cc: James A. Naddeo, Esquire
Anthony S. Guido, Esquire
Ms. Kathryn Silvester
Mr. John C. Rezk

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
No. 05-1116-CD

DUBOIS MEDICAL SUPPLY, INC.,

Plaintiff,

vs.

KATHRYN SILVESTER,

Defendant

ENTRY OF APPEARANCE

LAW OFFICES
SPENCE, CUSTER, SAYLOR, WOLFE
& ROSE, L.L.C.
P.O. BOX 280
JOHNSTOWN, PENNSYLVANIA 15907

FILED

AUG 31 2005

William A. Straw
Prothonotary/Clerk of Courts

DEBRA MILCHAK, JAMES
ABRAMS, RUSSELL THOMAS,
AND KATHRYN SILVESTER,

Plaintiffs,

vs.

DUBOIS MEDICAL SUPPLY,
INC.,

Defendant.

: IN THE COURT OF COMMON PLEAS OF
: CAMBRIA COUNTY, PENNSYLVANIA
: CIVIL ACTION - LAW
: DECLARATORY JUDGMENT ACTION

: No. 2005-3222

05-1115-CD

05-1116-CD

FILED FOR RECORD
05 SEP 13 AM 9:17
PROTHONOTARY
CAMBRIA COUNTY, PA.

FILED
m/11:31/20 cc
SEP 14 2005 ©

CONSENT ORDER

V. J. A. Shaw
Prothonotary/Clerk of Courts

AND NOW, this 12th day of September, 2005, it is

hereby ordered and decreed that pursuant to the Pennsylvania Rules of Civil Procedure, Rule 213.1(d)1(3), the Prothonotary of Cambria County is directed to notify the Clearfield County Court of Common Pleas that the Actions filed at 05-1116-CD and 05-1115-CD are Stayed until the issue raised in both the Actions filed in Cambria County and Clearfield County, regarding the non-competition clause, is resolved by the Cambria County Court of Common Pleas.

It is further ordered and decreed that the Actions in the Court of Common Pleas of Cambria County at Nos. 2005-2441 and 2005-3222 are hereby consolidated and further pleadings in this matter shall be filed to the No. 2005-3222 docket number.

EXTRACT FROM THE RECORD

CERTIFIED THIS 15th DAY OF

Sept A.D. 20 05

BY THE COURT:

James R. DiFrancesco
James R. DiFrancesco, Judge

Patty Birbilis
PROTHONOTARY

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

DUBOIS MEDICAL SUPPLY
COMPANY, INC.,

Plaintiff

vs.

KATHRYN SILVESTER,

Defendant

No. 05-1116-CD

Type of Case:

Civil Action - Equity

Type of Pleading:

**MOTION TO STRIKE
REQUEST FOR JURY TRIAL**

Filed on Behalf of:

PLAINTIFF

Counsel of Record for
This Party:

Anthony S. Guido, Esq.
Supreme Court No. 05877
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

814-371-7768

Date: September 13, 2005

FILED
m/1:37/31
SEP 14 2005
3cc
Any Guido
Prothonotary/Clerk of Courts

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

DUBOIS MEDICAL SUPPLY,	:	
COMPANY, INC.,	:	
Plaintiff	:	
	:	No. 05-1116-C.D.
vs.	:	
	:	
KATHRYN SILVESTER,	:	
Defendant	:	

MOTION TO STRIKE
REQUEST FOR JURY TRIAL

AND NOW, comes the Plaintiff, DUBOIS MEDICAL SUPPLY COMPANY, INC., by and through its attorneys, HANAK, GUIDO AND TALADAY, and files this Motion to Strike Request for Jury Trial by Defendant and in support thereof aver the following:

1. The above entitled action is an action in equity.
2. The parties to an equity action have no right to a trial by jury on issues of fact.
3. Pursuant to Pennsylvania Rule of Civil Procedure 1513, the Court in its discretion may submit the factual issues in an equitable action to a trial by jury on its own motion or on the petition of either party. However, the verdict of the jury shall be in the form of answers to specific questions and shall not be binding upon the Court.
4. In addition, Rule 1513 provides that demand for a jury trial in an equitable action is procedurally incorrect.

WHEREFORE, Plaintiff respectfully requests that your Honorable Court enter an Order striking the Defendant's demand for jury trial in this action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. S. Guido', is written above a horizontal line.

Anthony S. Guido
Attorney for Plaintiff

FILED

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

4/9/02 301114 Guido
SEP 20 2005 (jm)

DUBOIS MEDICAL SUPPLY,
COMPANY, INC.,

Plaintiff

vs.

KATHRYN SILVESTER,

Defendant

William A. Shaw
Prothonotary

No. 05-1116-C.D.

RULE

NOW, this 16th day of September, 2005,

upon consideration of the attached Motion to Strike Request for Jury Trial, a Rule is hereby issued upon the parties to Show Cause why the Motion should not be granted. Rule Returnable the 19th day of October, 2005, for filing written response.

N O T I C E

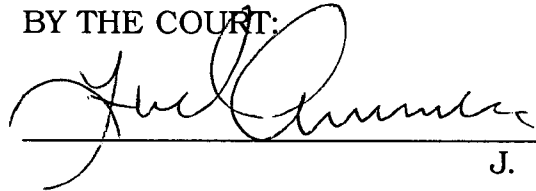
A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING MOTION OR MOTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED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

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

ATTORNEY GUIDO SHALL CAUSE SERVICE OF A
CERTIFIED COPY OF SAID MOTION, AS WELL AS THIS ORDER, ON
BOTH THE DEFENDANT AND HER ATTORNEYS JAMES NADDEO,
ESQ. AND RONALD P. CARNEVALI, JR., ESQ.

Court Administrator
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830
(814) 765-2641, Ext. 1300 or 1301

BY THE COURT:



J.

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

DUBOIS MEDICAL SUPPLY,
COMPANY, INC.,

Plaintiff

vs.

KATHRYN SILVESTER,

Defendant

:
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:
:

No. 05-1116-C.D.

ORDER OF COURT

AND NOW, this ____ day of _____, 2005, upon
consideration of the foregoing Motion, the Defendant's Request for a
Jury Trial in the above entitled action, being an equitable action, is
hereby stricken.

BY THE COURT:

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

DUBOIS MEDICAL SUPPLY,
COMPANY, INC.,

Plaintiff

vs.

KATHRYN SILVESTER,

Defendant

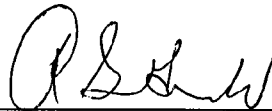
No. 05-1116-C.D.

CERTIFICATE OF SERVICE

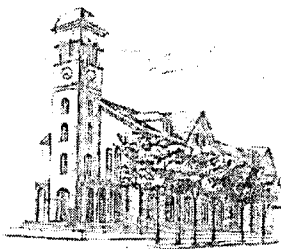
I do hereby certify that on the 13th day of September,
2005, I served a copy of the within Motion to Strike Request for Jury
Trial by first class mail, postage prepaid, to:

James A. Naddeo, Esq.
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

Ronald P. Carnevali, Jr., Esq.
Spence, Custer, Saylor, Wolfe & Rose, LLC
P. O. Box 280
Johnstown, PA 15907-0280



Anthony S. Guido, Esq.
Attorney for Plaintiff



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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

Sincerely,

William A. Shaw
Prothonotary

X You are responsible for serving all appropriate parties.

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

_____ Plaintiff(s)/Attorney(s)

_____ Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

DUBOIS MEDICAL SUPPLY
COMPANY, INC.,

Plaintiff

vs.

KATHRYN SILVESTER,

Defendant

No. 05-1116-CD

Type of Case:

Civil Action - Equity

Type of Pleading:

**CERTIFICATE OF
SERVICE**

Filed on Behalf of:

PLAINTIFF

Counsel of Record for
This Party:

Anthony S. Guido, Esq.
Supreme Court No. 05877
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

814-371-7768

Date: September 23, 2005

SEP 26 2005
m/19:0264
no cc
A Shaw

Prothonotary Clerk of Courts

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

DUBOIS MEDICAL SUPPLY,
COMPANY, INC.,

Plaintiff

vs.

KATHRYN SILVESTER,

Defendant

No. 05-1116-C.D.

CERTIFICATE OF SERVICE

I do hereby certify that on the 23rd day of September,
2005, I served a certified copy of Plaintiff's Motion to Strike Request
for Jury Trial and Rule to Show Cause Order dated September 16,
2005, by first class mail, postage prepaid, to:

James A. Naddeo, Esq.
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

Ronald P. Carnevali, Jr., Esq.
Spence, Custer, Saylor, Wolfe & Rose, LLC
P. O. Box 280
Johnstown, PA 15907-0280



Anthony S. Guido, Esq.
Attorney for Plaintiff

DUBOIS MEDICAL SUPPLY
COMPANY, INC.,

Plaintiff,

vs.

KATHRYN SILVESTER,

Defendant.

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

:
: No. 05-1116-CD
:

: **RESPONSE TO MOTION TO STRIKE**
: **REQUEST FOR JURY TRIAL**
:

: **COUNSEL OF RECORD FOR PARTY:**
:

: JAMES A. NADDEO, ESQUIRE
: I.D. No.: 06820
: 211 EAST LOCUST STREET
: POST OFFICE BOX 552
: CLEARFIELD, PENNSYLVANIA 16830
: (814) 765-1601
:

: RONALD P. CARNEVALI, JR., ESQUIRE
: I.D. No.: 47733
: SPENCE, CUSTER, SAYLOR, WOLFE &
: ROSE, LLC
: AMERISERV FINANCIAL BUILDING
: POST OFFICE BOX 280
: JOHNSTOWN, PENNSYLVANIA 15907
: (814) 536-0735

FILED *2cc*
01/31/2005
OCT 06 2005 *Ang Naddeo*
William A. Shaw
Prothonotary/Clerk of Courts

DUBOIS MEDICAL SUPPLY : IN THE COURT OF COMMON PLEAS OF
COMPANY, INC., : IN THE COURT OF COMMON PLEAS OF
 : CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff, : CIVIL ACTION - LAW
 :
vs. : No. 05-1116-CD
 :
KATHRYN SILVESTER, :
 :
Defendant.

RESPONSE TO MOTION TO STRIKE REQUEST FOR JURY TRIAL

NOW COMES, the Defendant, Kathryn Silvester, by and through her attorneys, Spence, Custer, Saylor, Wolfe & Rose, LLC and James A. Naddeo, and files this Response to Motion to Strike Request for Jury Trial as follows:

1. Admitted in part, denied in part. It is admitted that the Complaint filed by the Plaintiff, Dubois Medical Supply, Inc., purports to be an action in equity. By way of further answer, a review of the Complaint clearly indicates that along with equitable claims, Plaintiff makes claims based on unjust enrichment and seeks money damages.

2. Admitted in part, denied in part. It is admitted that generally, parties to an equity action have no right to a trial by jury. However, as set forth in Paragraph 1 above,

Plaintiff's Complaint clearly sets forth a claim for money damages such that a jury trial is warranted.

3. Denied. Plaintiff's reliance on the Pennsylvania Rules of Civil Procedure, Rule 1513 is obviously misplaced. The Pennsylvania Rules of Civil Procedure, Rule 1513 was rescinded December 16, 2003 effective July 1, 2004. Further, as set forth above, Plaintiff's alleged equity action contains claims for money damages such that a jury trial is warranted.

4. Denied. As previously set forth above, the Pennsylvania Rules of Civil Procedure, Rule 1513 has been rescinded. Further, Plaintiff's alleged equity action contains claims for money damages such that a jury trial is warranted.

**ADDITIONAL RESPONSES TO PLAINTIFF'S
MOTION TO STRIKE REQUEST FOR JURY TRIAL**

5. On July 29, 2005, approximately one (1) month prior to the filing of the instant action, Defendant, Silvester, filed a Complaint against Plaintiff, Dubois Medical Supply, Inc. in the Court of Common Pleas of Cambria County, Pennsylvania

seeking a judicial determination as to the enforceability of the non-competition clause at issue in the instant action.

6. On September 12, 2005, the Cambria County Court, pursuant to the Opinion and Order of the Honorable James R. DiFrancesco, stayed the instant action until further Order of Court. A copy of the September 12, 2005 Opinion and Order of the Court of Common Pleas of Cambria County is attached hereto as Exhibit "A".

7. The Cambria County Court concluded that the Complaint filed by Kathryn Silvester against Dubois Medical Supply, Inc. in Cambria County, contained a commonality of issues and was filed prior to the instant action by the Plaintiff in the Court of Common Pleas of Clearfield County, Pennsylvania.

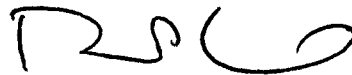
8. The effective result of the Cambria County Court's Opinion and Order is to prevent further proceedings in this action until resolution of the common issues by the Cambria County Court.

WHEREFORE, the Defendant, Kathryn Silvester, respectfully requests this Honorable Court deny the Plaintiff, Dubois Medical Supply Company, Inc.'s Motion to Strike Request for Jury Trial and/or in the alternative, determine that a ruling on said Motion to Strike Request for Jury Trial be withheld until such time as the action in the Court of Common Pleas of Cambria County, Pennsylvania is resolved.

Respectfully submitted,

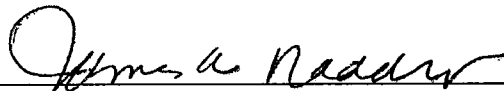
SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By



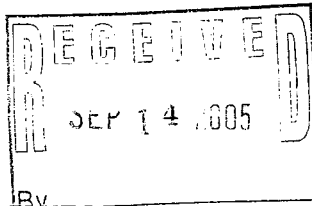
Ronald P. Carnevali, Jr.
Attorneys for Defendant,
John C. Rezk

By



James A. Naddeo
Attorneys for Defendant,
Kathryn Silvester

H. Abrams



DEBRA MILCHAK, ~~JAMES~~ : IN THE COURT OF COMMON PLEAS OF
ABRAMS, RUSSELL THOMAS, : CAMBRIA COUNTY, PENNSYLVANIA
AND KATHRYN SILVESTER, : CIVIL ACTION - LAW
: DECLARATORY JUDGMENT ACTION
Plaintiffs, :
: No. 2005-3222
vs. :
:
DUBOIS MEDICAL SUPPLY, :
INC., :
:
Defendant. :

FILED FOR RECORD
05 SEP 13 AM 9:17
PROTHONOTARY
CAMBRIA COUNTY, PA.

CONSENT ORDER

AND NOW, this 12th day of September, 2005, it is hereby ordered and decreed that pursuant to the Pennsylvania Rules of Civil Procedure, Rule 213.1(d)1(3), the Prothonotary of Cambria County is directed to notify the Clearfield County Court of Common Pleas that the Actions filed at 05-1116-CD and 05-1115-CD are Stayed until the issue raised in both the Actions filed in Cambria County and Clearfield County, regarding the non-competition clause, is resolved by the Cambria County Court of Common Pleas.

It is further ordered and decreed that the Actions in the Court of Common Pleas of Cambria County at Nos. 2005-2441 and 2005-3222 are hereby consolidated and further pleadings in this matter shall be filed to the No. 2005-3222 docket number.

BY THE COURT:

DiFrancesco
James R. DiFrancesco, Judge

EXHIBIT "A"

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 6th day of October, 2005, a true and correct copy of the Defendant, Kathryn Silvester's Response to Plaintiffs' Motion to Strike Request for Jury Trial was forwarded via first-class mail, postage pre-paid, to the following persons:

Anthony S. Guido, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
Post Office Box 487
Dubois, Pennsylvania 15801

Respectfully submitted,

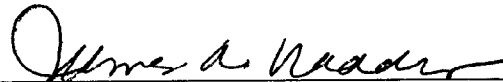
SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By



Ronald P. Carnevali, Jr.
Attorneys for Defendant,
John C. Rezk

By



James A. Naddeo
Attorneys for Defendant,
John C. Rezk

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100702
NO: 05-1116-CD
SERVICE # 1 OF 1
COMPLAINT IN EQUITY

PLAINTIFF: DUBOIS MEDICAL SUPPLY COMPANY, INC.
vs.
DEFENDANT: KATHRYN SILVESTER

SHERIFF RETURN

NOW, August 05, 2005, SHERIFF OF BEAVER COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT IN EQUITY ON KATHRYN SILVESTER.

NOW, August 23, 2005 AT 12:00 PM SERVED THE WITHIN COMPLAINT IN EQUITY ON KATHRYN SILVESTER, DEFENDANT. THE RETURN OF BEAVER COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

FILED

012:07 BN
DEC 19 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100702
NO: 05-1116-CD
SERVICES 1
COMPLAINT IN EQUITY

PLAINTIFF: DUBOIS MEDICAL SUPPLY COMPANY, INC.

vs.

DEFENDANT: KATHRYN SILVESTER

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	HANAK	14296	10.00
SHERIFF HAWKINS	HANAK	14296	30.00
BEAVER CO.	HANAK	14297	50.00

Sworn to Before Me This

_____ Day of _____ 2005

So Answers,



Chester A. Hawkins
Sheriff

100702

SHERIFF'S RETURN - REGULAR

CASE NO: 2005-01116 T

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF BEAVER

DUBOIS MEDICAL SUPPLY CO INC

VS

KATHRYN SILVESTER

ROBIN REDFERN, Deputy Sheriff of BEAVER

County, Pennsylvania, who being duly sworn according to law,

says, the within COMPLAINT IN EQUITY was served upon

SILVESTER KATHRYN the

DEFENDANT, at 1220:00 Hour, on the 23rd day of August, 2005

at 175 FOSTER RD

BEAVER FALLS, PA 15010 by handing to

HUSBAND - MATT SILVESTER

a true and attested copy of COMPLAINT IN EQUITY together with

and at the same time directing His attention to the contents thereof.

Sheriff's Costs:

Docketing	.00
Service	50.00
Affidavit	.00
Surcharge	.00
	.00
	50.00

So Answers:

Felix A. DeLuca Jr.

Felix A DeLuca Jr, Sheriff

08/16/2005
ATTORNEY

by

Robin Redfern
Deputy Sheriff

Sworn and subscribed to before me
this 29th day of September
2005 A.D.

A. Louise Battalini
Notary

NOTARIAL SEAL
A. LOUISE BATTALINI, NOTARY PUBLIC
BOROUGH OF BEAVER, BEAVER COUNTY
MY COMMISSION EXPIRES JANUARY 15, 2007



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office
Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 110
CLEARFIELD, PENNSYLVANIA 16830
BEAVER COUNTY PA.

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

ROBERT SNYDER
CHIEF DEPUTY

MARILYN HAMM
DEPT. CLERK

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 100702

DUBOIS MEDICAL SUPPLY COMPANY, INC.

vs.

KATHRYN SILVESTER

TERM & NO. 03-1116-CD

COMPLAINT IN EQUITY

SERVE BY: 09/01/05

MAKE REFUND PAYABLE TO HANAK, GUIDO & TALADAY, ESQ.

SERVE: KATHRYN SILVESTER

ADDRESS: 1175 FOSTER ROAD, BEAVER FALLS, PA

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF BEAVER COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, August 05, 2005.

RESPECTFULLY,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

----- Distribution Of Payment -----		
Transaction Description	Payment Amount	
ADVANCE PAYMENT	50.00	GUIDO ANTHONY S
	<hr/> 50.00	

HANNAK, GUIDO, AND TALADAY

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

DELUXE - FORM WMC-2 V-2

DATE	DESCRIPTION	AMOUNT
8/1/05	DuBois Medical Supply Co., Inc. v. Kathryn Silvester (Clearfield Co.) 1175 Foster Road Beaver Falls PA	4,205

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

DuBOIS MEDICAL SUPPLY
COMPANY, INC.,

Plaintiff

-vs-

KATHRYN SILVESTER,

Defendant

No. 05-1116-CD

Type of Case: Civil Action

Type of Pleading: Praecipe
for Discontinuance

Filed on Behalf of: Plaintiff

Counsel of Record for This
Party:

Anthony S. Guido, Esq.
Supreme Court No. 05877
Hanak, Guido and Taladay
P.O. Box 487
DuBois, PA 15801
(814) 371-7768

FILED No cc
m/11:15 am 1 Cert of disc
JUL 21 2006 issued to Atty
Guido

William A. Shaw
Prothonotary copy to c/A

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

DuBOIS MEDICAL SUPPLY
COMPANY, INC.,

Plaintiffs

-vs-

KATHRYN SILVESTER,

Defendant

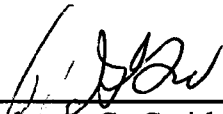
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No. 05-1116-CD

PRAECIPE FOR DISCONTINUANCE

TO WILLIAM SHAW, PROTHONOTARY OF SAID COURT:

Please mark the above case settled, discontinued and ended.



Anthony S. Guido
Attorney for Plaintiff

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

CIVIL DIVISION

DuBois Medical Supply Company, Inc.

**Vs.
Kathryn Silvester**

No. 2005-01116-CD

CERTIFICATE OF DISCONTINUATION

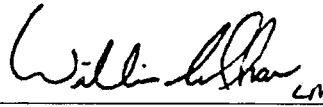
Commonwealth of PA
County of Clearfield

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 July 21, 2006, marked:

Settled, discontinued and ended

Record costs in the sum of \$85.00 have been paid in full by Anthony S. Guido Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 21st day of July A.D. 2006.



William A. Shaw, Prothonotary