

05-1636-CD  
David E. Magnuson vs Sean Malloy

David Magnuson vs Sean Malloy, Sue Malloy  
2005-1636-CD

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

DAVID E. MAGNUSON,  
Plaintiff,

v.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants.

\*  
\*  
\*  
\*  
\* No. 05 - 163a - CD  
\*  
\*

\* Type of Pleading:

\* **COMPLAINT**

\* Filed on behalf of:

\* Plaintiff

\* Counsel of Record for  
this party:  
\* JAMES A. NADDEO, ESQUIRE

\* Supreme Court ID#: 06820  
\* 207 East Market Street  
\* P. O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

**FILED** *acc shff*  
*0103784* *Any D*  
OCT 24 2005 *85.00*

William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID E. MAGNUSON,  
Plaintiff,

v.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants.

\*  
\*  
\*  
\*  
\* No. 05 - - 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 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

DAVID E. MAGNUSON,  
Plaintiff,

v.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants.

\*  
\*  
\*  
\*  
\* No. 05 - - CD  
\*  
\*  
\*  
\*

COMPLAINT

NOW COMES the Plaintiff, David E. Magnuson, and by his attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff is David E. Magnuson, an adult individual, who resides at 2187 Montgomery Run Road, Clearfield, Pennsylvania 16830.
2. That the Defendant, Sean Malloy, is an adult individual who resides at 90 Carr Hill Road, Clearfield, Pennsylvania 16830.
3. That the Defendant, Tricia Malloy, is an adult individual who resides at 90 Carr Hill Road, Clearfield, Pennsylvania 16830.
4. That at all times referred to herein the Plaintiff was engaged generally in the construction business and specifically in the construction of residential dwellings.
5. That at all times referred to herein the Defendants were the owners of a piece or parcel of land located

in Pike Township, Clearfield County, Pennsylvania, more particularly described in a deed dated May 27, 2004 and recorded in the Office of the Register and Recorder for Clearfield County as Instrument No. 200409700.

COUNT I

6. That in July of 2004 Defendants requested that Plaintiff erect a residential dwelling for Defendants upon the premises described in Paragraph 5 hereof.

7. That said residence was to be constructed from a log kit to be purchased by Defendants with plans to be supplied by the Defendants.

8. That the parties verbally agreed that the Plaintiff would construct Plaintiff's dwelling on a time and materials basis.

9. That Plaintiff commenced construction of Defendants' dwelling on or about July 19, 2004.

10. That the work performed by Plaintiff at the specific request of Defendants was completed on or about May 25, 2005.

11. That the total value of labor and materials supplied by Plaintiff to Defendants was \$56,421.18 as appears from the invoices attached hereto collectively as Exhibit "A".

12. That Defendants have paid to Plaintiff the sum of \$27,121.18 leaving a balance due and owing to Plaintiffs in the amount of \$28,500.00.

13. That Plaintiff has made demand for the balance owed to him by Defendants but Defendants have failed and/or refused to pay.

WHEREFORE, Plaintiff demands judgment from the Defendants in the amount of \$28,500.00 with interest from May 25, 2005. Jury Trial Demanded.

COUNT II

14. That the Plaintiff incorporates Paragraphs 1 through 7 of this Complaint by reference and makes them a part hereof.

15. That Plaintiff provided Defendants with a written proposal to perform work toward the construction of Defendant's residential dwelling for the total contract price of Sixty Thousand (\$60,000.00) in July/August of 2004, a copy of said contract is attached hereto as Exhibit "B".

16. That Defendants accepted Plaintiff's proposal in July/August, 2004.

17. That Plaintiff performed the work described in the proposal attached hereto as Exhibit "B" on or about May 25, 2005.

18. That Defendants have paid to the Plaintiff the sum of Twenty-Seven Thousand Nine Hundred Twenty-One and 18/1100 (\$27,921.18) toward the total contract price of Sixty Thousand One Hundred (\$60,100.00) Dollars leaving a balance due to Plaintiff in the amount of Thirty-Two Thousand One Hundred Seventy-Eight and 82/100 (\$32,178.82) Dollars.

19. That Plaintiff has made demand for the balance owed to him by Defendants but Defendants have failed and/or refused to pay.

WHEREFORE, Plaintiff demands judgment from the Defendants in the amount of \$32,178.82 with interest from May 25, 2005. Jury Trial Demanded.

COUNT III

20. That the Plaintiff incorporates Paragraphs 1 through 7 and 15 through 18 of this Complaint by reference and makes them a part hereof.

21. That a portion of the work described in the proposal attached hereto as Exhibit "B" was performed by subcontractors employed directly by the Defendants.

22. That the value of the work performed by Plaintiff as required by the proposal attached hereto as Exhibit "B" was \$27,921.18.

23. That at the express request of Defendants, Plaintiff performed additional work on a time and materials

basis toward the construction of Defendants' dwelling which extra work is fully described in the exhibit attached hereto as Exhibit "C".

24. That the value of the extra work performed by Plaintiff on a time and materials basis was Forty-three Thousand Five Hundred (\$43,500.00) Dollars.

25. That Defendants have paid to Plaintiff the sum of Fifteen Thousand (\$15,000.00) Dollars toward the extra work performed by Plaintiff leaving a balance due and owing to Plaintiff in the amount of Twenty-Eight Thousand Five Hundred (\$28,500.00) Dollars.

26. That Plaintiff has made demand for the balance owed to him by Defendants but Defendants have failed and/or refused to pay.

WHEREFORE, Plaintiff demands judgment from the Defendants in the amount of Twenty-Eight Thousand Five Hundred (\$28,500.00) Dollars with interest from May 25, 2005. Jury Trial Demanded.

COUNT IV

27. That Plaintiff incorporates Paragraphs 1 through 9 of the First Count of this Complaint by reference and makes them a part hereof.

28. That just prior to construction, Defendants requested that Plaintiff supply them with a "contract" to

provide to the lender financing the construction of their dwelling.

29. That Plaintiff prepared the proposal attached hereto as Exhibit "B" and delivered said proposal to Defendants.

30. That the express request of Defendants, Plaintiff proceeded to provide services toward the construction of Defendants' dwelling on a time and materials basis.

31. That the reasonable value of the materials and labor supplied to Defendants was Fifty-Six Thousand Four Hundred Twenty-One and 18/100 (\$56,421.18) Dollars as appears from the Invoices attached hereto collectively as Exhibit "A".

32. That Defendants have paid to Plaintiff the total sum of Twenty-Seven Thousand One Hundred Twenty-One and 18/100 (\$27,121.18) Dollars toward the reasonable value of the labor and materials supplied to Defendants by Plaintiff.

33. That Defendants have failed and/or refused to pay for the balance of the reasonable labor and materials costs provided to Defendants by Plaintiff in the amount of Twenty-Eight Thousand Five Hundred (\$28,500.00) Dollars.

34. That Defendants have been unjustly enriched in the amount of Twenty-Eight Thousand Five Hundred (\$28,500.00) Dollars.

WHEREFORE, Plaintiff claims damage from the Defendants in the amount of Twenty-Eight Thousand Five Hundred (\$28,500.00) Dollars. Jury Trial Demanded

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

David Magnuson  
2187 Montgomery Run Road  
Clifd. 16850

JOB WORK ORDER

DATE OF ORDER

CUSTOMER'S ORDER NO.	PHONE	MECHANIC	HELPER	STARTING DATE 9/17/09
BILL TO Sean Malloy				ORDER TAKEN BY
ADDRESS Cars Hill, Trey Rock Estates				<input type="checkbox"/> DAY WORK <input type="checkbox"/> CONTRACT <input type="checkbox"/> EXTRA
CITY				
JOB NAME AND LOCATION Malloy Cabin				JOB PHONE

DESCRIPTION OF WORK	
Labor	
Dave Magnuson - 1020	
George Magnuson - 802	
Kirk McCloskey - 228	
Craig Geppert - 356	
Matt Gildersleave - 160	
Mike Hess - 64	
Chris Bartol - 19	
Tony Geppert - 15	
Total - 2664 Hrs	
Total - \$73500.00	
125/05 Paid - \$10,000	TOTAL MATERIALS
Scarred Plywood	TOTAL LABOR
	TAX
DATE COMPLETED 9/10/09	WORK ORDERED BY
	TOTAL AMOUNT \$

I hereby acknowledge the satisfactory completion  
of the above described work.

Signature \_\_\_\_\_

- No one home    Total amount due  
for above work; or    Total billing to  
be mailed when  
job finished

David Magnuson  
2187 Montgomery Run Road  
Clifd. 16830

JOB WORK ORDER

DATE OF ORDER:

CUSTOMER'S ORDER NO.	PHONE	MECHANIC	HELPER	STARTING DATE 9/17/09
BILL TO Sean Malloy				ORDER TAKEN BY
ADDRESS Cars Hill, Trey Book Estates				<input type="checkbox"/> DAY WORK <input type="checkbox"/> CONTRACT <input type="checkbox"/> EXTRA
CITY				
JOB NAME AND LOCATION Malloy Cabin				JOB PHONE

DESCRIPTION OF WORK

Labor

Dave Magnuson - 1020

George Magnuson - 802

Rick McCloskey - 228

Graig Geppert - 356

Matt Gildersleeve - 160

Mike Hess - 64

Chris Barlow - 19

Tony Geppert - 15

Total - 2664 Hrs

Total - \$413500.00

<u>125/05 Paid</u>	<u>\$10,000</u>	TOTAL MATERIALS	
<u>Shared Payment</u>		TOTAL LABOR	
		TAX	
		TOTAL AMOUNT	\$

I hereby acknowledge the satisfactory completion  
of the above described work.

No one home  Total amount due  
for above work; or  Total billing to  
be mailed when  
job finished

Signature \_\_\_\_\_

TOPS. FORM 3868

EXHIBIT "A"  
ORIGINAL

MADE IN U.S.A.

Dave Magnuson  
2187 Montgomery Run Road  
Chel. PA 16830

## PROPOSAL

No.

Date

Sheet No.

### Proposal Submitted To:

Name *Malley*

Street

City State

Phone

### Work To Be Performed At:

*Malley House*

Street

City State

Date of Plans

Architect

We hereby propose to furnish the materials and perform the labor necessary for the completion of *Malley cabin*

Block foundation - \$5,000, Basement \$1000 \$2,400

Excavation - \$2,000, Footer - \$1,600

Gravel - \$500, waterproof foundation - \$300

French drains - \$300, Plumbing, Heating & AC - \$10,000

Electrical work - \$5,000

Floor coverings - \$6,000

Fireplace - \$5,000

Kitchen cabinets & counter tops installed - \$7,000

Carpentry work - \$15,000

Workmanship will be guaranteed for one year.

Water & Sewer hook-ups not included.

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of *Sixty thousand and one hundred* Dollars [\$60,100]. with payments to be made as follows:

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by

Respectfully submitted

*Dave Magnuson*

Per

Note-This proposal may be withdrawn by us if not accepted within days.

### ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature

Signature

Date

## Additional work done at Malloy house as done by Dave Magnuson

Built two chases for plumbers duct work, leading to second floor.

Built extra set of steps for deck.

Built railings for deck and for staircases. Deck railings did not come with log cabin kit.

One-third of necessary framing did not come with deck package.

Installed extra deck joists to accommodate for hot tub.

Built two trapezoid windows, which were not included in kit.

Insulated around all doors, windows, and in every nook and cranny where insulation was necessary.

There was 480 square feet of white pine flooring was supplied for the upstairs, but was not intended to be the finished floor. The customer wanted it to be the finished floor. Thus had to sand, stain and put on three coats of polyurethane.

The staircase and staircase railing, balcony railings were custom-made. The customer did not use the two-by-four railings and two by twelve treads that came with the kit,

Stained and finished staircase with one coat of stain and three coats of polyurethane.

All trim for windows, interior and exterior doors needed sanded, stained, varnished with two coats, while sanding between coats.

All interior trim in the kit was fluted. This was not known beforehand, thus required more time to sand between coats.

Rosettes and plinth blocks were not included with kit. We had to stain and finish all rosettes and plinth blocks. The plinth blocks had to be made.

Installed four windows and one French door in basement, which were not included in kit.

Plans for cabin specified straight staircase leading to basement, owners wanted a landing at base of staircase with steps leading to the left and right.

Framed walls on both sides of staircase leading to basement. This was not included in cabin plans.

Installed wood burner and flue pipe in basement.

Installed main water line to house.

Helped install 1,000-gallon propane tank.

Assembled vanity for upstairs bathroom.

Picked up and delivered stones for fireplace, approximately three tons.

Cleaned mildew off logs and some of framing timbers.

Stained logs and wood ceilings in two upstairs bedrooms.

Kit was delivered on four 18-wheelers, which myself and three others helped unload.

Mortised logs to receive receptacles, switches and lights. This was work the electrician did not feel comfortable in doing.

Tore out and replaced and finished 16 square feet of hardware flooring that was damaged due to a leaking shower.

Picked up and delivered two tons of firewood with my dump truck.

Helped load shingles not to be used because customer changed the style of the shingles. Also helped unload new shingles.

Hanged and finished all dry wall, approximately 2,800 square feet, primed all dry wall with one coat of primer and then painted with two coats of finished paint, while sanding between two coats of paint.

Installed 1,400 square feet of unfinished oak flooring. Also sanded, stained and applied four coats of polyurethane to unfinished floor. The owners did not inform me of what floor coverings they were using before starting the project.

Made six custom thresholds, where floor transitioned and allowing for floor expansion and contraction.

Installed window blinds.

Built custom enclosure around Jacuzzi bathtub.

Helped plumbers install bathroom vanity countertop and upstairs bathtub.

Enclosed visible plumbing and duct work with wood bulkhead.

### **Excavation work**

Backfilled approximately 400 feet of waterline, drilled holes for deck posts and railings and backfilled propane tank with sand and also backfilled gas line with sand. Approximately 20 tons of sand was used.

COMMONWEALTH OF PENNSYLVANIA )  
 )  
 COUNTY OF CLEARFIELD )  
 )

Before me, the undersigned officer, personally appeared DAVID E. MAGNUSON, who being duly sworn according to law, depose and state that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief. 

David E. Magnus  
David E. Magnus

SWORN and SUBSCRIBED before me this 21st day of September, 2005.

*Jinda C. Lewis*

**COMMONWEALTH OF PENNSYLVANIA**

Notarial Seal  
Linda C. Lewis, Notary Public  
Clearfield Boro, Clearfield County  
My Commission Expires July 25, 2007

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

DAVID E. MAGNUSON, :  
Plaintiff : No. 05-1636-CD  
:  
vs. :  
:  
SEAN MALLOY and :  
TRICIA MALLOY, :  
husband and wife, :  
Defendants :  
:

FILED 3cc  
11/3/58 Bt Atty Smith  
NOV 07 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
CR

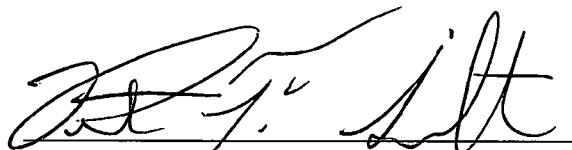
**PRAECIPE**

To: William A. Shaw, Prothonotary

Dear Sir:

Please enter my appearance as attorney for the Defendants Sean Malloy and Tricia Malloy  
in the above-captioned matter.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Defendants  
Supreme Court I.D. # 34291  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

Date: November 7, 2005

cc: James A. Naddeo, Esquire

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

DAVID E. MAGNUSON,  
Plaintiff,

v.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants.

\*  
\*  
\*  
\*  
\*  
\*

\* No. 05 - 1636 - CD

\*  
\*  
\*  
\*  
\*  
\*

\* Type of Pleading:

\* **ACCEPTANCE OF SERVICE**

\* Filed on behalf of:  
\* Defendants  
\*  
\*  
\* Counsel of Record for  
\* this party:  
\* PETER F. SMITH, ESQUIRE

\* Supreme Court ID#: 34291  
\* 30 South Second Street  
\* P. O. Box 130  
\* Clearfield, PA 16830  
\* (814) 765-5595

**FILED**

NOV 15 2005

8/3/05  
William A. Shaw  
Prothonotary/Clerk of Courts

W.C. C/C

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

DAVID E. MAGNUSON,  
Plaintiff,

v.

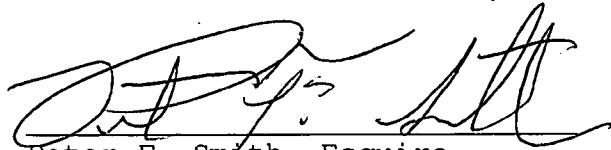
SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants.

\*  
\*  
\*

\* No. 05 - - CD  
\*  
\*

ACCEPTANCE OF SERVICE

I, Peter F. Smith, Esquire, do hereby accept service of Plaintiff's Complaint on behalf of Defendants, Sean Malloy and Tricia Malloy.



Peter F. Smith, Esquire  
Attorney for Defendants

Date: 01/14/05

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

DAVID E. MAGNUSON, :  
Plaintiff : No. 05-1636-CD  
:  
vs. :  
:  
SEAN MALLOY and :  
TRICIA MALLOY, :  
husband and wife, :  
Defendants :  
:

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I delivered a true and correct copy of  
**DEFENDANTS' ANSWER, NEW MATTER & COUNTERCLAIMS** to the Attorney for the  
Plaintiff on January 6, 2006 by Hand Delivery to the following address:

James A. Naddeo, Esquire  
207 East Market Street  
Clearfield, PA 16830

Respectfully submitted,



Date: January 6, 2006

Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

FILED  
01/06/2006  
JAN 06 2006  
WM

William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID E. MAGNUSON,  
Plaintiff

vs.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants

: No. 05-1636-CD

: Type of Case:  
**Civil**

: Type of Pleading:  
**Answer, New Matter  
& Counterclaims**

: Filed on Behalf of:  
**Defendants**

: Counsel of Record for Defendants:  
**Peter F. Smith, Esquire**  
Supreme Court I.D. #34291  
P. O. Box 130  
30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

: Counsel of Record for Plaintiff:  
**James A. Naddeo, Esquire**  
Supreme Court I.D. #06820  
207 East Market Street  
P. O. Box 552  
Clearfield, PA 16830  
(814) 765-1601

FILED 3cc  
01/06/2006 Atty  
JAN 06 2006 Naddeo  
WM  
William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID E. MAGNUSON, :  
Plaintiff : No. 05-1636-CD  
:  
vs. :  
:  
SEAN MALLOY and :  
TRICIA MALLOY, :  
husband and wife, :  
Defendants :  
:

**NOTICE TO DEFEND**

To: David E. Magnuson  
C/O James A. Naddeo, Esquire  
Attorney for Plaintiff

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

Date: 1/3/06



Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130  
30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

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

DAVID E. MAGNUSON, :  
Plaintiff : No. 05-1636-CD  
vs. :  
SEAN MALLOY and :  
TRICIA MALLOY, :  
husband and wife, :  
Defendants :  
:

**ANSWER, NEW MATTER & COUNTERCLAIMS**

COMES NOW, SEAN MALLOY and TRICIA MALLOY, by their attorney Peter F. Smith,  
who answer the Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.

**COUNT I**

6. Admitted.
7. Admitted.
8. Denied. The original agreement between the parties was that Mr. Magnuson was to assemble the kit for a flat fee of \$60,100.00. Mr. Magnuson then suggested to Mr. and Mrs. Malloy that he could perform these services on a time and materials basis for less than \$60,100.00. Mr. and Mrs. Malloy accepted this proposal with the added condition that Mr. Magnuson's total charges on

a time and materials basis would not and could not exceed \$60,100.00. Admitted that these were verbal agreements.

9. Admitted.

10. Admitted.

11. Denied. Mr. Magnuson prepared his "invoice" after he finished. That document does not represent the parties' contract. Further denied because Mr. Magnuson's Exhibit "A" is in summary form only. The particular charges should be itemized and verified. Mr. and Mrs. Malloy demand strict proof thereof at trial.

12. While it is admitted that Mr. and Mrs. Malloy have paid Mr. Magnuson \$27,921.18, it is denied that a balance of \$28,500.00 is due and owing for the reasons set forth in the preceding paragraph 11, below in New Matter and the Counterclaims.

13. While it is admitted that Mr. Magnuson has made demand upon Mr. and Mrs. Malloy, they deny that he is entitled to the balance asserted in paragraph 12 and strict proof of the balance due is demanded at trial.

WHEREFORE, the Defendants pray that this Honorable Court deny Plaintiff's demand for judgment in the amount of \$28,500.00 together with interest from May 25, 2005.

## COUNT II

14. Defendants incorporate the preceding paragraphs 1 through 13 as though set forth in full.

15. Admitted. This is in fact the original agreement as discussed in paragraph 8 above. Mr. and Mrs. Malloy further aver that Mr. Magnuson was to provide the materials necessary to perform this work. In many instances, Mr. and Mrs. Malloy supplied these materials to Mr. Magnuson. An itemization of the materials supplied is attached hereto and incorporated herein by

reference as Defendants' Exhibit 1. The total value of the materials subcontractors supplied and paid by Mr. and Mrs. Malloy is \$15,539.02. Therefore, Mr. and Mrs. Malloy are entitled to a set-off or deduction in that amount against any amount claimed by Mr. Magnuson.

16. Denied as stated. While it is true that Mr. and Mrs. Malloy originally accepted Mr. Magnuson's proposal, that proposal was subsequently amended as discussed in paragraph 8 above.

17. Denied as stated. Mr. Magnuson performed some of the work and/or supplied some of the materials described in the parties' contract attached to the Complaint as Exhibit "B." Defendants' Exhibit 1 lists the items and their cost which Mr. Magnuson failed to supply and/or perform.

Further denied because the price for the individual items specified on the parties' agreement on Plaintiff's Exhibit "B" was in several instances exceeded by the final cost, which constitutes a breach by Plaintiff.

Further denied because Mr. and Mrs. Malloy, not Mr. Magnuson, retained and paid for the plumbing and heating, the cost of which greatly exceeded Mr. Magnuson's contractual commitment on his Exhibit "B."

Further denied because Mr. and Mrs. Malloy supplied some of the labor necessary to perform, complete and/or correct construction services which Mr. Magnuson promised to perform pursuant to the parties' agreement. A breakdown of these items which includes a column itemizing Mr. Magnuson's contractual commitments and a second column itemizing Mr. and Mrs. Malloy's costs is attached hereto and incorporated herein by reference as Defendants' Exhibit 2.

Mr. and Mrs. Malloy further deny this averment because Mr. Magnuson's performance of certain work was defective or incomplete and therefore in breach of their agreement as more fully set forth in Defendants' Counterclaims below.

18. Admitted that Mr. and Mrs. Malloy have paid Mr. Magnuson \$27,921.18, but they deny that any further amount is due Mr. Magnuson for the reasons set forth in answers 11 and 17 above. Mr. and Mrs. Malloy demand strict proof of Mr. Magnuson's entitlement to any amount above the amount they have already paid.

19. Admitted that Mr. Magnuson has made demand upon Mr. and Mrs. Malloy but denied that he is entitled to any additional amounts for the reasons set forth in paragraphs 11 and 17 above.

WHEREFORE, Defendants pray that Plaintiff's demand for judgment and interest be denied.

### COUNT III

20. Defendants incorporate the preceding paragraphs 1 through 19 as though set forth in full.

21. Admitted.

22. Admitted that Mr. and Mrs. Malloy have paid Mr. Magnuson that amount, but otherwise denied. Mr. and Mrs. Malloy paid \$27,921.18 based on their agreement with Mr. Magnuson described in paragraph 8 not Mr. Magnuson's proposal.

23. While it is admitted that Mr. Magnuson did perform some additional work on a time and materials basis, his Exhibit "C" is incomplete and inaccurate. Mr. and Mrs. Malloy further aver that some of this additional work was improperly performed. Mr. and Mrs. Malloy address each of the individual items listed by Mr. Magnuson on his Exhibit "C" in Defendants' Exhibit 3.

24. Denied and strict proof of the amount claimed is demanded at trial.

25. While Mr. and Mrs. Malloy admit that they paid Mr. Magnuson \$15,000.00, they deny that this payment was made for the additional services described by Mr. Magnuson in

paragraph 23 of the Complaint. Rather, Mr. and Mrs. Malloy made this payment to Mr. Magnuson pursuant to their agreement as described in paragraph 8 of this Answer.

26. Denied as stated. Mr. Magnuson only made general demands for payment. Mr. Magnuson never presented the list identified as his Exhibit "C" to Mr. and Mrs. Malloy, and further denied that he is entitled to any amounts for the reasons set forth in paragraphs 11, 17 and 25.

WHEREFORE, the Defendants pray that Plaintiff's demand for judgment and interest be denied.

#### COUNT IV

27. Defendants incorporate the preceding paragraphs 1 through 26 as though set forth in full.

28. Admitted.

29. Admitted and, in point of fact, Mr. Magnuson's Exhibit "B" represents the maximum contract price to which he is entitled by virtue of his agreement with Mr. and Mrs. Malloy.

30. Denied. As stated in paragraph 8 above, the original proposal was for \$60,100.00. Mr. Magnuson suggested to Mr. and Mrs. Malloy that he could perform the services they required for a lower price on a time and materials basis. Therefore, the parties amended their original agreement. Mr. Magnuson was to proceed on a time and materials basis, but the total price was not to exceed \$60,100.00.

31. Denied for the reasons set forth in paragraph 11 above.

32. Denied as stated. Mr. and Mrs. Malloy have paid Mr. Magnuson \$27,921.18 pursuant to the parties' agreement and Mr. and Mrs. Malloy are entitled to set-offs and counterclaims against any balance due Mr. Magnuson as more fully set forth in their Counterclaims

below.

33. Denied. Mr. and Mrs. Malloy have properly and lawfully refused to tender any additional amounts to Mr. Magnuson for the reasons set forth in paragraphs 11, 17 and 32 above.

34. Denied as a statement of law, and further denied that Mr. and Mrs. Malloy have been unjustly enriched. Mr. and Mrs. Malloy themselves paid for many of the services and materials that Mr. Magnuson was to supply pursuant to the parties' agreement. Further denied because Mr. Magnuson's performance of the services which he actually did provide was defective in many instances as more fully set forth in paragraphs 17, 23 and 25 above and on the Defendants' Exhibit 3.

WHEREFORE, the Defendants pray that Plaintiff's demand for damages and interest be denied.

#### NEW MATTER

35. Defendants incorporate the preceding paragraphs 1 through 34 as though set forth in full.

36. Mr. Magnuson's claims violate the Statute of Frauds. This is illustrated by the fact that the Complaint asserts four different causes of action against Mr. and Mrs. Malloy based on three alleged and significantly different "contracts" and the misapplication of an equitable principle.

37. To the extent that Mr. Magnuson's theory of recovery is based on an equitable principle, then it is barred by his laches.

38. To the extent that Mr. Magnuson's theory of recovery is based on an equitable principle, then it is barred by his unclean hands.

39. Both Mr. and Mrs. Malloy repeatedly asked Mr. Magnuson for bills or statements. Mrs. Malloy asked at least weekly. Mr. Malloy asked at least on eleven separate occasions during the course of construction. Mr. Magnuson knew that Mr. and Mrs. Malloy had a fixed budget for this project which the Malloys could not afford to exceed. A list of eleven occasions when Mr. Malloy requested a bill and Mr. Magnuson's responses are attached hereto and incorporated herein as Defendants' Exhibit 4.

40. Therefore, Mr. Magnuson waived any right he may have had to claim amounts in excess of the parties' agreement which represented Mr. and Mrs. Malloys' maximum budget, and Mr. Magnuson is estopped from making this additional demand upon the Malloys.

WHEREFORE, the Defendants pray that the demands for judgment asserted by Plaintiff's four Counterclaims be denied.

#### FIRST COUNTERCLAIM

41. Defendants incorporate the preceding paragraphs 1 through 40 as though set forth in full.

42. The proposal which Mr. Magnuson sues upon in Count II of the Complaint and which is attached as Plaintiff's Exhibit "B" warrants workmanship for one year.

43. Mr. Magnuson breached that warranty because the items listed on Defendants' Exhibit 4 were either defective, incomplete or not completed in a workmanlike manner. Mr. and Mrs. Malloy include the cost to correct each breach of warranty to the right of each breach.

44. Mr. Malloy, Paul Bloom, Les Ball, Bob Sharpless and Mike Malloy, the Defendant's father, supplied the labor to correct and/or complete these items. An itemization totaling \$12,715,00 is attached hereto and incorporated herein by reference as Defendants' Exhibit 5.

WHEREFORE, Defendants claim a judgment or a set-off against the Plaintiff in the amount of \$12,715.00 together with interest at the statutory rate from May 25, 2005 when Plaintiff left the job.

#### SECOND COUNTERCLAIM

45. Defendants incorporate the preceding paragraphs 1 through 44 as though set forth in full.

46. The proposal upon which Mr. Magnuson sues and which is attached to the Complaint as his Exhibit "B" obligated Mr. Magnuson to furnish all materials for the work specified in that proposal which was accepted by the Malloys and incorporated in their final agreement with Mr. Magnuson. During construction, the Malloys supplied a number of those materials which are itemized on their Exhibit 1 which is attached hereto and incorporated herein by reference.

47. The total value of the materials supplied by the Malloys which should have been supplied by Mr. Magnuson is \$15,539.02.

48. Mr. Magnuson's failure to supply these materials and/or his failure to credit the amount of materials supplied by Mr. and Mrs. Malloy against the amount due under the parties' agreement constitute a breach by Mr. Magnuson of the parties' agreement.

WHEREFORE, Defendants claim a judgment or a set-off against the Plaintiff in the amount of \$15,539.02 together with interest at the statutory rate from May 25, 2005 when Plaintiff left the job.

### THIRD COUNTERCLAIM

49. Defendants incorporate the preceding paragraphs 1 through 48 as though set forth in full.

50. Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 2001-1 *et seq.* (hereinafter "UTPCPL) prohibits confusing, unfair, fraudulent and/or deceptive acts or practices.

51. Mr. Magnuson has violated the UTPCPL in his dealings with Mr. and Mrs. Malloy which are the substance of this litigation because:

- a) Mr. Magnuson failed to provide Mr. and Mrs. Malloy written notice of their right to rescind their agreement and a three day waiting period as required by 73 P.S. §201-7.
- b) Mr. Magnuson failed to comply with his written guarantee and warranty contained in the Proposal identified as Plaintiff's Exhibit "B" which violates 73 P.S. § 201-2(XIV).
- c) The improvements which Mr. Magnuson made to Mr. and Mrs. Malloy's real estate were below the standard of workmanship agreed to in Plaintiff's Exhibit "B" which violates 73 P.S. § 201-2(XVI).
- d) Mr. Magnuson's promise to perform the services requested by Mr. and Mrs. Malloy on a time and materials basis for less than \$60,100.00; therefore, his filing of this lawsuit for amounts which will exceed \$60,100.00 is a confusing, unfair, fraudulent and/or deceptive practice within the meaning of 73 P.S. 2001-2(4).
- e) Mr. Magnuson's failure upon Mr. and Mrs. Malloy's repeated requests to supply them with periodic billings when he knew they had a fixed budget within which the parties had to work, constitutes a confusing, unfair, fraudulent and/or deceptive practice within the meaning of 73 P.S. § 2001-2(4).

52. The UTPCPL permits private actions and entitles injured parties to recover up to treble damages. 73 P.S. § 201-9.2(a).

53. The UTPCPL also permits courts to award such other relief as deemed necessary, id. Precedent has awarded injured consumers attorney fees and court costs reasonably and actually incurred.

WHEREFORE, Defendants request treble damages exceeding \$25,000.00 together with their attorney fees and court costs reasonably and actually incurred and interest at the statutory rate from May 25, 2005.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter F. Smith".

Peter F. Smith, Esquire  
Attorney for Defendants

Date: January 6, 2006

**VERIFICATION**

SEAN MALLOY and TRICIA MALLOY do hereby swear and affirm that they have read the foregoing Answer, New Matter and Counterclaims and it is true and accurate to the best of their information, knowledge and belief, Furthermore, they understand that the same is made pursuant to 18 Pa.C.S.A. 4904, relating to unsworn falsification to authorities.

Dated: 12/2/05

Sean Malloy  
Sean Malloy

Dated: 12/2/05

T. Malloy  
Tricia Malloy

Just Hard ware no fixtures.

Hardware material supplied by The Malloy's

Assorted nails-\$23.72  
Screws-\$13.17  
Nuts-\$1.20  
Washers-\$1.60  
Assorted paint brushes, rollers etc-\$164.04  
Assorted stain and poly and paint-\$742.91  
Steel wool-\$2.99  
25-runners-\$116.50  
Wood putty-\$14.42  
6" 3 knot brush-\$8.99  
Wood extension-\$4.29  
Roof coating-\$74.75  
200amp meter socket-\$62.99  
Ground rod-\$14.00  
Grounding wire-\$15.80  
Grounding clamps-\$4.98  
200amp load center-\$159.99  
Copper tubing-\$20.85  
½ x 10L copper-\$39.16  
½" elbows-\$12.76  
2" couplers-\$1.14  
½" sweat valves-\$5.96  
½" copper tees-\$3.12  
½" copper-\$350.00  
¾" copper couplers-\$3.12  
½" copper couplers-\$1.10  
Additional copper fittings-\$180.00  
20-3/4 x 10L copper-\$275.80  
20-1/2 X 10L copper-\$97.90  
¾" copper-\$350.00  
7/8" wood bit-\$2.69  
12 x 4 reg-\$55.92  
12 x 2 ¼ registers-\$18.87  
12 x 6 registers-\$7.29  
10 x 6 registers-\$9.49  
Assorted wall plates-\$322.68  
Joint compound-\$41.37  
Concrete-\$63.75  
Expanding foam-\$143.76  
Lumber-\$723.00  
Drywall-\$925.00  
Bleach-\$35.00  
Electrical boxes-\$95.76  
Assorted wire-\$539.84

Smoke detectors-\$74.95  
Ground materials-\$30.00  
Staples-\$92.00  
Breakers-\$404.00  
Switches-\$379.08  
½ " coupler-2.97  
½" black elbow-\$2.58  
½"gas valve-\$5.99  
½" x 12" black nipple-\$8.37  
Plastic fittings-\$350.00  
Shutoff inline-\$69.99  
3" schedule 40-\$300.00  
2" schedule 40-\$360.00  
Chrome shut offs-\$85.00  
Traps-\$40.00  
Chrome nipples.\$150.00  
Escutcheins-\$6.00  
Extended trap bath-\$106.00  
12-2 w/g (20 rolls)-\$1200.00  
14-2 w/g (10 rolls)-\$450.00  
Outside boxes-\$48.00  
20amp GFI's-\$300.00  
400ft Cat 5 phone line-\$396.00  
Single boxes-\$134.00  
Triple boxes-\$39.00  
Covers-\$32.00  
Ceiling boxes-\$120.00  
Coaxial (300)-\$65.00  
Hangers-\$40.00  
Lock sets-\$530.05  
8' x 12' slide shelf-\$8.79  
8' x 16 slide shelf-\$12.99  
8'x ¾ bar-\$8.69  
Hang bars-\$27.90  
Hot water heater-\$689.00  
Firebox and vents-\$1000.00  
Rental equipment-\$1600.00  
Replaced vanity top (broken by workers)-\$110.00  
Replaced tub (broken by workers)-\$160.00  
Replaced shower (had to be replaced)-\$349.00

\$ 15,539.02

LABOR WITH MATERIALS SUPPLIED BY MALLOYS

	Estimate (proposal)	Labor with materials supplied by The Malloy's
Foundation	\$ 5,000	\$ 5,500
Floor	2,400	2,400
Excavation	2000	2,000
Footer	1600	1,600
Gravel	500	500
Waterproof foundation	300	300
Drains	300	300
Plumbing, Heating, AC	10,000	18,342.56
Electrical	5,000	17,174.75
Fireplace	5,000	7,500
Cabinets	7,000	7,589
Carpentry	15,000	15,539.02 paid (43,500 claimed)
Labor Malloys		12,715
Flooring	6,000	6,000
Totals	\$60,100	\$97,460.33 actually paid including Mr. Magnuson's 15,000 as in proposal.

## DEFENDANTS' ANSWERS TO PLAINTIFF'S EXHIBIT C

1. Denied. These cases were included in the parties' agreement.
2. Admitted.
3. Denied. This did not take any more time than installing the railing which was supplied by the kit. The wood was at the site.
4. Admitted that extra framing materials were necessary, but the Malloys paid for these materials not Mr. Magnuson.
5. Admitted that Mr. Magnuson installed these joices, but the Malloys supplied the materials.
6. Admitted that Mr. Magnuson constructed these windows, but the Malloys supplied the materials.
7. Denied. These items were to be provided by Mr. Magnuson pursuant to the parties' agreement.
8. Denied as stated. The Malloys asked Mr. Magnuson if installing and finishing the pine flooring would cost more than installing carpet, and he said no. Carpet was to be installed pursuant to the parties' agreement. Therefore, no additional charge should be imposed for this work.
9. Denied for the reasons stated in number 3 above.
10. Staining and finishing were to be provided pursuant to the parties' agreement.
11. Staining and finishing were to be provided pursuant to the parties' agreement.
12. Admitted that the trim was fluted, but denied that sanding between coats was necessary and also denied because the Malloys did not request Mr. Magnuson to perform this additional work and because it provided no tangible benefit.
13. Denied. Mr. Magnuson did not obtain the Malloys' agreement that he deviate from the kit plans, and he did this because it saved him time in the installation. Therefore, he is not entitled to any additional compensation.
14. Admitted that these windows and door were not included in the original kit, but the Malloys purchased these materials, and Mr. Magnuson agreed to install them for no additional charge.
15. Admitted but the staircase is made from scrap materials and any deviation from the original plans resulted in no appreciable, additional work for Mr. Magnuson.

16. Admitted, but Mr. Magnuson did not obtain the Malloys' agreement to pay for this additional work before he performed it.
17. Admitted, but the Malloys supplied the woodburner and flue and permitted Mr. Magnuson to install it to keep the job site warm during construction. This actually saved Mr. Magnuson the cost of renting or supplying a temporary space heater.
18. Denied. Mr. Malloy dug the ditch and installed the water line.
19. Denied. Roger Bressler performed this entire installation.
20. Denied that any additional payment is due for this work because it was to be included in the parties' agreement.
21. Admitted that Mr. Magnuson picked up the stone for the fireplace. The Malloys asked Mr. Magnuson if he wanted paid, and he said no.
22. Denied. Mr. Malloy cleaned the mildew off the logs.
23. Denied as stated. Mr. Magnuson did stain one bedroom ceiling, but Mr. Malloy stained all other ceilings himself, and further denied because Mr. Magnuson was to perform this work as part of the parties' agreement.
24. Denied. A third party delivered and unloaded the kit while Mr. Magnuson stood and watched.
25. Denied. This work was included in the parties' agreement.
26. Denied that Mr. Magnuson is entitled to payment for this service. He and the plumber created the problem that caused the leak. Mr. Magnuson warranted his work for one year. He is solely responsible for this repair.
27. Denied that the Malloys are responsible for this item. Mr. Magnuson was responsible for heating the job site during construction and further denied set forth for the reasons set forth at number 17 above.
28. Denied as stated. Mr. Malloy and one of his employees loaded the original shingles. They also unloaded the new ones, but Mr. Magnuson may have helped for 15 or 20 minutes.
29. Denied. Mr. Magnuson was to hang and finish drywall pursuant to his original proposal. Further denied because Mr. and Mrs. Malloy applied the final coat of paint.
30. Denied. Mr. Magnuson knew the type of floor coverings the Malloys had selected. Finishing this floor was his mistake and was not requested or authorized by the Malloys.

31. Denied as stated. Mr. Magnuson cut and installed the doors incorrectly. Therefore, he had to make the "custom thresholds" to disguise his mistake.
32. Admitted that Mr. Magnuson installed four blinds which probably took him 20 minutes. The Malloys installed the other ten.
33. Denied because the enclosure around the Jacuzzi was included in the parties' agreement.
34. Denied because the vanity -- a cabinet -- was included in the parties' agreement.
35. Denied because framing and carpentry were included in the parties' agreement.
36. Denied. Backfilling and excavation work were included in the parties' agreement.

## MR. MALLOY'S REQUESTS FOR A BILL

<u>DATE OF REQUEST</u>	<u>MR. MAGNUSON'S RESPONSES</u>
09/03/04	"I'm too lazy to do it."
09/24/04	"I hate paperwork."
10/04/04	"I don't have time."
10/13/04	"I'll have it next week."
10/21/04	"I'll have it next week."
11/01/04	"I'll have it next week."
11/28/04	"I'm too lazy to do the research."
11/29/04	"I'll have it next time."
01/03/05	"I forgot it. I'll have it next time."
02/10/05	"I have it almost done."
03/30/05	"I have it almost done."

Things not completed / or satisfactory

- a) Backfilled over top of fireplace cleanout. 4 hrs. \$80
- b) Interior doors cut too short. Unable to give estimate, this would require trim to be removed, doors pulled, cut, reinstalled, trim reinstalled. This is a major defect in workmanship. There is a 2 inch gap between door and floor.
- c) Laundry room door opens onto another door it also does not shut properly. Dave was asked to fix this and did not. 2hrs. \$40 and materials \$45.
- d) The house was a disgrace when we moved in. It took us a week to clean the upstairs. It took another two weeks to clean up the basement. The outside was covered in Gatorade bottles and wood scraps. Cleaning- Upstairs-61 hrs. \$1220 - Downstairs-80 hrs. \$1600
- e) There is a roof jack still on our roof. .5hrs. \$10
- f) The deck was not finished when we moved in. We had to make numerous telephone calls to get Dave back to finish it. 10 telephone calls-10 minutes each 1.5 hrs. \$60
- g) The drywall in the master bath was installed wrong causing water damage to our hardwood floors and ceramic tile in the master bath. Dave replaced wood floor but never returned to finish polyurethane. He also only replaced one of the two cracked tiles in bathroom. Finish floor 4 hrs. \$80
- h) Placed master bath vanity in the wrong place causing a new hole needing drilled into our log walls for the vanity light. This left a gaping hole in the wall, which had to be covered with a board.
- i) Used the wrong color stain on exterior windows and never corrected it. 15 hrs. \$300
- j) The basement steps are tacked down poorly. One step is several inches shorter in depth than the rest. This is a safety hazard. 6 hrs. \$120
- k) The front porch had no steps for seven months. This was mentioned to Dave numerous times.
- l) Kitchen cabinets shifted and needed to be adjusted. 2 hrs. \$40
- m) Had to caulk all corners of the home inside and out. 15 hrs. \$300
- n) Labor on home construction 347 hrs. \$6940.
- o) Labor Paul Bloom 30 hrs. \$600.
- p) Les Ball 30 hrs. \$600.
- q) Mike Malloy 24 hrs. \$480
- r) Bob Sharpless 10 hrs. \$200

TOTAL: \$12,715.00

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

DAVID E. MAGNUSON,  
Plaintiff,

v.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

\* No. 05 - 1636 - CD

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

\* Type of Pleading:

\* **ANSWER TO NEW MATTER  
AND COUNTERCLAIM**

\* Filed on behalf of:  
\* Plaintiff

\* Counsel of Record for  
\* this party:  
\* JAMES A. NADDEO, ESQUIRE

\* Supreme Court ID 06820  
\* 207 East Market Street  
\* P. O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

FILED 1cc  
01/04/2006 Amy  
FEB 02 2006  
WADDEO  
William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID E. MAGNUSON,  
Plaintiff,

v.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants.

\*  
\*  
\*  
\*  
\* No. 05 - 1636 - CD  
\*  
\*  
\*

PLAINTIFF'S ANSWER TO NEW MATTER  
AND COUNTERCLAIM

NOW COMES the Plaintiff, David E. Magnuson, and by his attorney, James A. Naddeo, Esquire, sets forth the following:

35. Plaintiff incorporates Paragraphs 1 through 34 of his Complaint as though set forth in full.

36. States a conclusion of law to which no answer is required. To the extent that an answer may be required, reference is made to Pa. R.C.P. 1020 which Rule specifically allows for the pleading of causes of action in the alternative.

37. States a conclusion of law to which no answer is required. To the extent that an answer may be required, reference is made to the statute of limitations at law which as a generality follows the doctrine of laches.

38. States a conclusion of law to which no answer is required. To the extent that an answer may be required, it is

denied that Plaintiff has unclean hands but to the contrary provided labor and materials in good faith and at his cost.

39. Denied in so far as it alleges that Defendants repeatedly requested Plaintiff for bills or statements. To the contrary, no such request was made until the end of March 2005. In further answer thereto it is denied that Plaintiff had any knowledge of Defendants' budget.

40. States a conclusion of law to which no answer is required. To the extent that an answer may be required, it is alleged that Defendants at all time had the right to terminate Plaintiff's work so as to meet their budget constraints.

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

FIRST COUNTERCLAIM

41. Plaintiff incorporates Paragraphs 1 through 34 of his Complaint and his answers to Paragraphs 35 through 40 as though set forth in full.

42. Admitted.

43. Denied and on the contrary it is alleged that all work performed by Plaintiff was completed in a good and workmanlike manner.

44. Denied in that after reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

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

SECOND COUNTERCLAIM

45. Plaintiff incorporates Paragraphs 1 through 34 of his Complaint and his answers to Paragraphs 35 through 44 as though set forth in full.

46. Admitted in so far as it states that Plaintiff was obligated to furnish work and materials specified in the proposal attached hereto to his Complaint as Exhibit "B". In further answer thereto, it is admitted that Defendants supplied materials the exact nature and value of which after reasonable investigation cannot be ascertained by the Plaintiff, knowledge of which is within the exclusive control of the Defendants and strict proof thereof is demanded at trial.

47. Denied in that after reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

48. States a conclusion to which no answer is required. In further answer thereto it is admitted that to the extent Defendants supplied materials Defendants would be entitled to credit against the amount due to Plaintiff under his proposal.

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

THIRD COUNTERCLAIM

49. Plaintiff incorporates Paragraphs 1 through 34 of his Complaint and his answers to Paragraphs 35 through 48 as though set forth in full.

50. Contains a statement of law to which no answer is required.

51. Generally denied and in further answer thereto Plaintiff answers specifically as follows:

A. Denied and on the contrary it is alleged that the parties did not enter into a consumer contract on the home of the Defendants.

B. Denied and on the contrary it is alleged that at no time following completion of the construction did Defendants claim that Plaintiff had breached any written warranty and in further answer thereto all punch list items were corrected by Plaintiff.

C. Denied and on the contrary it is alleged that all work performed by Plaintiff was done in a good and workmanlike fashion.

D. Denied and on the contrary it is alleged that Plaintiff at no time reported to Defendants that all work necessary to complete Defendants' home could be performed on a time and materials basis for less than Sixty Thousand One Hundred (\$60,100.00) Dollars but to the contrary did agree to

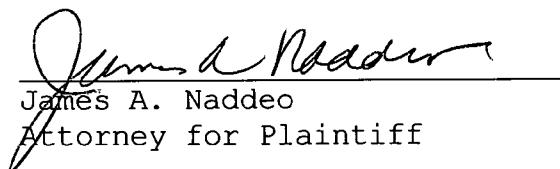
provide all labor necessary to complete construction of Defendants' dwelling on a time and materials basis.

E. Denied and on the contrary it is alleged that Defendants did not make repeated requests of Plaintiff for periodic billings but to the contrary made no such request until the end of March 2005.

52. States a conclusion of law to which no answer is required.

53. States a conclusion of law to which no answer is required.

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

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

COMMONWEALTH OF PENNSYLVANIA )  
ss.  
COUNTY OF CLEARFIELD )

Before me, the undersigned officer, personally appeared DAVID MAGNUSON, who being duly sworn according to law, depose and state that the facts set forth in the foregoing Answer to New Matter and Counterclaim are true and correct to the best of his knowledge, information and belief.

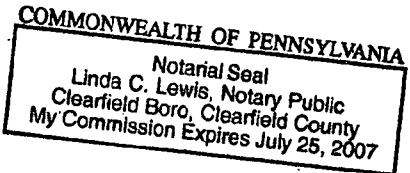


\_\_\_\_\_  
David Magnuson

SWORN and SUBSCRIBED before me this 31<sup>st</sup> day of January, 2006.



\_\_\_\_\_  
Linda C. Lewis



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

DAVID E. MAGNUSON,  
Claimant,

v.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Owners.

\*

\*

\*

\*

\*

\*

\*

\*

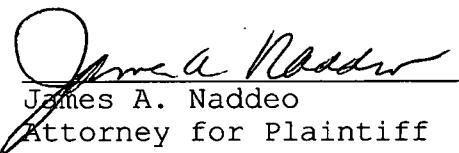
No. 05 - 1636 - CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Plaintiff's Answer to New Matter and Counterclaim filed in the above-captioned case was served on the following and in the following manner on the 2nd of February, 2006:

First-Class Mail, Postage Prepaid

Peter F. Smith, Esquire  
30 South Second Street  
PO Box 130  
Clearfield, PA 16830

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100933  
NO: 05-1636-CD  
SERVICE # 1 OF 2  
COMPLAINT

PLAINTIFF: DAVID E. MAGNUSON  
vs.  
DEFENDANT: SEAN MALLOY and TRICIA MALLOY

**SHERIFF RETURN**

NOW, November 07, 2005 AT 9:05 AM SERVED THE WITHIN COMPLAINT ON SEAN MALLOY DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO PETER SMITH, ATTORNEY FOR DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: SNYDER /

FILED  
01/8/45/01  
FEB 14 2006  
WM

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100933  
NO: 05-1636-CD  
SERVICE # 2 OF 2  
COMPLAINT

PLAINTIFF: DAVID E. MAGNUSON  
VS.  
DEFENDANT: SEAN MALLOY and TRICIA MALLOY

**SHERIFF RETURN**

NOW, November 07, 2005 AT 9:05 AM SERVED THE WITHIN COMPLAINT ON TRICIA MALLOY DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO PETER SMITH, ATTORNEY FOR DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: SNYDER /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100933  
NO: 05-1636-CD  
SERVICES 2  
COMPLAINT

PLAINTIFF: DAVID E. MAGNUSON  
VS.  
DEFENDANT: SEAN MALLOY and TRICIA MALLOY

SHERIFF RETURN

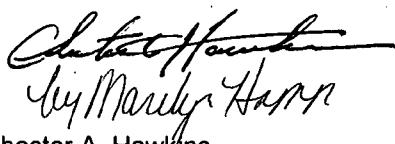
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	NADDEO	10508	20.00
SHERIFF HAWKINS	NADDEO	10508	27.37

Sworn to Before Me This

Day of \_\_\_\_\_ 2006

So Answers,

  
Chester A. Hawkins  
Sheriff

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

DAVID E. MAGNUSON,  
Plaintiff,

v.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants.

\*  
\*  
\*  
\*

\* No. 05 - 1636 - CD

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

\* Type of Pleading:

\*  
\*  
\*  
\*

\* CERTIFICATE OF SERVICE

\*  
\*  
\*  
\*

\* Filed on behalf of:  
\* Plaintiff  
\*  
\* Counsel of Record for  
\* this party:  
\* JAMES A. NADDEO, ESQUIRE

\*  
\*  
\*  
\*

\* Supreme Court ID 06820  
\* 207 East Market Street  
\* P. O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

FILED 1cc  
03-32-08 Atty Naddo  
MAR 02 2008  
WM

William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID E. MAGNUSON,  
Claimant,

v.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Owners.

\*  
\*  
\*  
\*  
\*  
\*  
\*

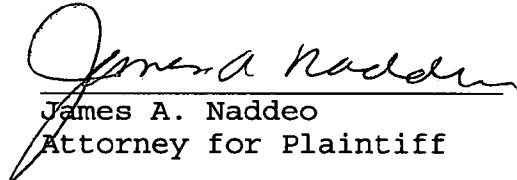
\* No. 05 - 1636 - CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Notice of Taking Deposition filed in the above-captioned case was served on the following and in the following manner on the 2nd of March, 2006:

First-Class Mail, Postage Prepaid

Peter F. Smith, Esquire  
30 South Second Street  
PO Box 130  
Clearfield, PA 16830

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

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

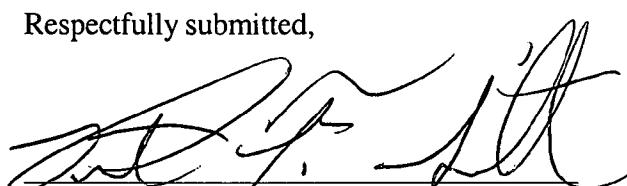
DAVID E. MAGNUSON, :  
Plaintiff : No. 05-1636-CD  
vs. :  
SEAN MALLOY and :  
TRICIA MALLOY, :  
husband and wife, :  
Defendants :  
:

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I delivered a true and correct copy of  
**NOTICE TO TAKE ORAL DEPOSITIONS of David E. Magnuson**, to the Attorney for the  
Plaintiff on March 6, 2006 by Hand Delivery to the following address:

James A. Naddeo, Esquire  
207 East Market Street  
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

Date: March 6, 2006

FILED  
OCT 10 2006  
MAR 06 2006  
2006  
LAW  
10cc

William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID E. MAGNUSON,  
Plaintiff,

v.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants.

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\* No. 05 - 1636 - CD

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

Type of Pleading:

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

FILED <sup>cc</sup>  
03/30/01 A44  
MAR 13 2006 NADDEO  
LM

William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID E. MAGNUSON,  
Claimant,

v.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Owners.

\*

\*

\*

\* No. 05 - 1636 - CD

\*

\*

\*

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Notice of Taking Deposition filed in the above-captioned case was served on the following and in the following manner on the 13th of March, 2006:

First-Class Mail, Postage Prepaid

Peter F. Smith, Esquire  
30 South Second Street  
PO Box 130  
Clearfield, PA 16830

  
James A. Naddeo  
Attorney for Plaintiff

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

DAVID E. MAGNUSON, :  
Plaintiff :  
vs. : No. 05-1636-CD  
SEAN MALLOY and :  
TRICIA MALLOY, :  
husband and wife, :  
Defendants :  
:

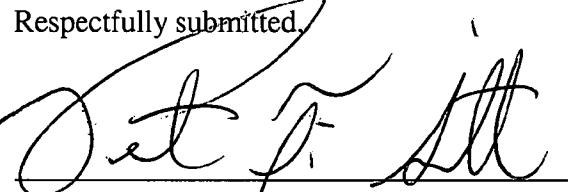
**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Defendants, certify that I delivered a true and correct copy of **NOTICE TO TAKE ORAL DEPOSITIONS (Rescheduling Notice)**, to the Attorney for the Plaintiff on March 14, 2006 by Hand Delivery to the following address:

James A. Naddeo, Esquire  
207 East Market Street  
Clearfield, PA 16830

Date: March 14, 2006

Respectfully submitted,

  
Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

FILED NO cc  
01/10/06 BY  
MAR 14 2006 JM

William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID E. MAGNUSON,  
Plaintiff,

v.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants.

No. 05 - 1636 - CD

### Type of Pleading:

**PRAECLPTE TO LIST  
FOR TRIAL**

Filed on behalf of:  
Plaintiff

Counsel of Record for  
this party:

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

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

FILED  
01 31 38 601 cc  
JUN 06 2006 Atty Naddel  
60  
William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID E. MAGNUSON,  
Plaintiff,

\*

\*

\*

v.

\* No. 05-1636-CD

\*

\*

\*

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants.

\*

\*

\*

**PRAECIPE TO LIST FOR TRIAL**

TO THE PROTHONOTARY:

Please place the above-captioned matter on the next list for trial. In support thereof I certify the following:

1. There are no Motions outstanding.
2. Discovery has been completed and the case is ready for trial.
3. The case is to be heard by jury.
4. Notice of the Praecipe has been given to opposing counsel.
5. The time for trial is estimated at two (2) days.

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

Date: June 6, 2006

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

DAVID E. MAGNUSON,  
Plaintiff,

v.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants.

\*  
\*  
\*  
\*  
\*  
\*

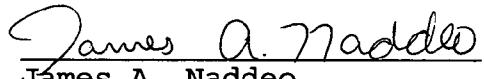
No. 05 - 1636 - CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Praeclipe To List For Trial filed in the above-captioned case was served on the following and in the following manner on the 6th of June, 2006:

First-Class Mail, Postage Prepaid

Peter F. Smith, Esquire  
30 South Second Street  
PO Box 130  
Clearfield, PA 16830

  
James A. Naddeo  
Attorney for Plaintiff

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

DAVID E. MAGNUSON,  
Plaintiff,

v.

SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants.

\*

\*

\*

\* No. 05 - 1636 - CD

\*

\*

\*

\*

\*

\*

\*

\*

\*

\* Type of Pleading:

\*

\*

\*

\*

**PRAECIPE TO SETTLE  
AND DISCONTINUE**

\*

\*

\*

\*

\*

\* Filed on behalf of:  
\* Plaintiff

\*

\*

\*

\*

\* Counsel of Record for  
\* this party:

\*

\*

\*

\*

\* James A. Naddeo, Esquire  
\* Pa I.D. 06820

\*

\*

\*

\*

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

**FILED**  
03/09/06  
AUG 31 2006  
Cert. of Disc.  
to Atty. Naddeo

William A. Shaw  
Prothonotary/Clerk of Courts

Copy to CJA  
(GP)

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

DAVID E. MAGNUSON,  
Plaintiff,

v.

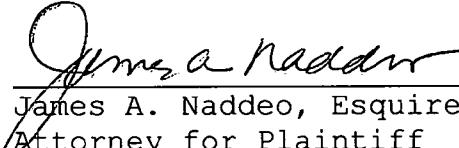
SEAN MALLOY and  
TRICIA MALLOY,  
husband and wife,  
Defendants.

\*  
\*  
\*  
\*  
\* No. 05 - 1636 - CD  
\*  
\*  
\*  
\*

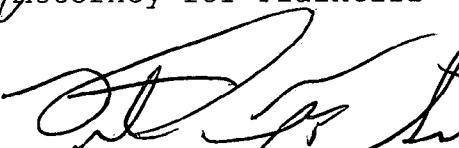
**PRAECIPE TO SETTLE AND DISCONTINUE**

TO THE PROTHONOTARY:

Please mark the above-captioned case settled and discontinued.

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

Attorney for Plaintiff

  
\_\_\_\_\_  
Peter F. Smith

Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

 COPY

**David E. Magnuson**

vs.

**No. 2005-01636-CD**

**Sean Malloy**  
**Tricia Malloy**

**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 August 31, 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 31st day of August A.D. 2006.



---

William A. Shaw, Prothonotary