

05-1989-CD
Robbins Lumber Co vs Aaron
Hershberger

Robbins Lumber vs Aaron Hershberger
2005-1989-CD

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

ROBBINS LUMBER COMPANY, LLC,
Plaintiff

No. 2005-1989-CD

vs.

AARON A. HERSHBERGER,
Defendant

Type of Case:
CIVIL

Type of Pleading:
COMPLAINT

Filed on Behalf of:
PLAINTIFF

Counsel for This Party:
Peter F. Smith, Esquire
Supreme Court No. 34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

FILED *Atty pd*
11/32/05 85.00
DEC 22 2005 *CCShff*
William A. Shaw *Atty*
Prothonotary/Clerk of Courts

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

ROBBINS LUMBER COMPANY, LLC, :
Plaintiff : No. 2005-

vs. :

AARON A. HERSHBERGER, :
Defendant :

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint 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 other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF
YOU DO NOT HAVE OR CANNOT AFFORD A LAWYER, 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

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Clearfield County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

Clearfield County Court Administrator
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830
(814) 765-2641

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

ROBBINS LUMBER COMPANY, LLC, :
Plaintiff : No. 2005-

vs. :

AARON A. HERSHBERGER, :
Defendant :
:

COMPLAINT

COMES NOW, ROBBINS LUMBER COMPANY, LLC, by its attorney Peter F. Smith,
who states the following in support of this complaint:

1. The Plaintiff, **ROBBINS LUMBER COMPANY, LLC**, is a Pennsylvania Limited
Liability Company, with principal office at 2365 Zion Road, Olanta, Pennsylvania 16863
2. The Defendant is **AARON A. HERSHBERGER**, whose last known address is
2724 Shamokin Trail, Luthersburg, Pennsylvania 15848.
3. Commencing on February 17, 2005 and ending March 10, 2005, Robbins Lumber
sold quantities of lumber to the Defendant in seven separate transactions.
4. The dates of those transactions with corresponding invoice numbers and amounts
appear on Plaintiff's Exhibit A which is attached hereto and incorporated herein by reference.
5. These transactions took place at Robbins Lumber place of business in Olanta,
Clearfield County, Pennsylvania.

6. The Defendant took delivery of the lumber at Robbins Lumber place of business in Olanta, Clearfield County, Pennsylvania.

7. The Defendant was to have submitted payment for the lumber he purchased from Robbins Lumber to Robbins Lumber place of business in Olanta, Clearfield County, Pennsylvania.

8. Venue and jurisdiction of this lawsuit are properly lodged in Clearfield County, Pennsylvania.

9. Defendant understood that if he failed to pay each invoice within thirty (30) days that the unpaid balance would accrue interest at the rate of 7.5% per annum.

10. Demand has been made upon the Defendant to pay the balance due, but he has failed to do so.

11. Robbins Lumber made written demand on the Defendant to pay the balance due by letters dated September 1, 2005 and September 30, 2005. True and correct copies of those letters are attached hereto and incorporated herein by reference at Plaintiff's Exhibits B and C.

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against the Defendant in the amount of \$25,496.28 together with interest at the statutory rate and costs of suit.

Respectfully submitted,

Date: 12/21/05



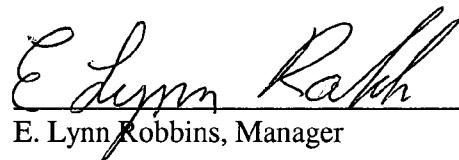
Peter F. Smith, Esquire
Attorney for Plaintiff

VERIFICATION

I verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

ROBBINS LUMBER COMPANY, LLC

Dated: 12/21/05



E. Lynn Robbins, Manager

Robbins Lumber Company LLC
2365 Zion Road
Olanta, PA 16863
(814)-236-3384

Aaron A. Hershberger
2724 Shamokin Trail
Luthersburg, PA 15848

									12/01/05
Date	Invoice #	Amount	Interest @ 7.5% APR			Total			
02/17/05	5772	\$8,240.00	\$463.50						\$8,703.50
02/18/05	5774	\$2,037.00	\$114.58						\$2,151.58
03/02/05	5780	\$4,935.00	\$246.75						\$5,181.75
03/04/05	5784	\$1,293.00	\$64.65						\$1,357.65
03/08/05	5786	\$1,115.00	\$55.75						\$1,170.75
03/10/05	5790	\$3,849.00	\$192.45						\$4,041.45
03/10/05	5791	\$2,752.00	\$137.60						\$2,889.60
TOTAL		\$24,221.00	\$1,275.28						\$25,496.28
		Total Amount Owed: \$25,496.28							

Robbins Lumber Company
2365 Zion Road
Olanta, PA 16863
(814)-236-3384

Aaron A. Hershberger
2724 Shamokin Trail
Luthersburg, PA 15848

9/1/05

Mr. Hershberger:

This notice has been written to inform you that this is your final invoice. For your convenience, we have enclosed a copy of your original invoice. Our records show that you currently owe \$24, 221 for lumber purchased between February 1st and March 10th of 2005. If this invoice is not settled in full within 10 days of receipt of this letter, our company will have no choice but to seek legal assistance to settle this matter.

Sincerely,



Lynn Robbins

encl: Invoice

Robbins Lumber Company
2365 Zion Road
Olanta, PA 16863
(814)-236-3384

Aaron A. Hershberger
2724 Shamokin Trail
Luthersburg, PA 15848

9/30/05

Mr. Hershberger:

This letter has been written to confirm the phone conversation that we conducted earlier this month. During this conversation, you offered to begin payment plus interest incurred during your invoice's delinquency starting the following Monday. You failed to contact me on that Monday regarding your payment, and have subsequently failed to provide said payment. I received a subsequent phone call from you, but your message indicated no information about when I would be receiving said payment.

Our records show that you still owe the original amount of \$24, 221 for lumber purchased between February 17th and March 10th of 2005. For your convenience we have taken the liberty of calculating the interest on your invoice and adding it to the original total. Your new total owed will be \$25,080. We look forward to receiving payment within 10 days so that we will not be forced to seek legal assistance in settling this matter.

Sincerely,

Lynn Robbins

encl: Invoice

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

ROBBINS LUMBER COMPANY, LLC, : *2005*
Plaintiff : No. ~~205~~ 1989-CD
: Type of Case: Civil
vs. : Type of Pleading: Answer, New
: Matter And Counterclaim
AARON A. HERSHBERGER : Filed on Behalf of: Defendant
Defendant : Counsel for this Party:
: Querino R. Torretti, Esq.
: Supreme Court I.D. No.: 23996
: 600 East Main Street
: P.O. Box 218
: Reynoldsville, PA 15851
: (814) 653-2243

FILED

JAN 30 2006

o/1.20/cw
William A. Shaw
Prothonotary/Clerk of Courts
1 cent to ATF

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

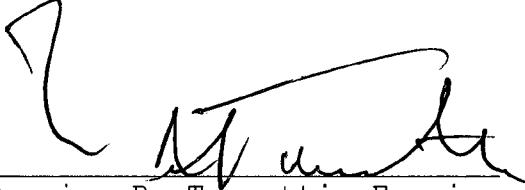
ROBBINS LUMBER COMPANY, LLC, : *2005*
Plaintiff : No. 205-1989-CD
: :
: CIVIL DIVISION
vs. : :
: :
: :
AARON A. HERSHBERGER :
Defendant :

NOTICE TO PLEAD

TO: Robbins Lumber Company, LLC.
E. Lynn Robbins, Manager
c/o Peter F. Smith, Esquire

YOU ARE HEREBY notified to file a written response to the enclosed Answer, New Matter, And Counterclaim within twenty (20) days from the date of service hereof or a judgment may be entered against you.

Dated: January 30, 2006


Querino R. Torretti, Esquire
Attorney for Defendant
PO Box 218, 600 E. Main St.
Reynoldsville, PA 15851
814-653-2243

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Clearfield County is required by law to comply with the Americans With Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

Clearfield County Court Administrator
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830
(814) 765-2641

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

ROBBINS LUMBER COMPANY, LLC, : *2005*
Plaintiff : No. 205-1989-CD
: :
: CIVIL DIVISION
vs. : :
: :
: :
AARON A. HERSHBERGER :
Defendant : :

ANSWER, NEW MATTER, AND COUNTERCLAIM

The Defendant, Aaron A. Hershberger, through his attorney, Querino R. Torretti, Esquire, sets forth the following in way of an Answer, New Matter, and counterclaim by averring:

1. Denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1. The same are therefore denied and strict proof thereof demanded.

2. Admitted.

3. Admitted in part and denied in part. It is admitted that the commencing February 17, 2005 and ending March 10, 2005, Robbins Lumber Company, LLC sold quantities of lumber on seven separate occasions but not to Defendant on all seven occasions. Said lumber was sold to Mose Byler who did not have authority to purchase all of said lumber for Defendant, Aaron A. Hershberger.

4. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4. The same is therefore denied and strict proof thereof demanded.

5. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5. The same is therefore denied and strict proof thereof demanded.

6. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6. The same is therefore denied and strict proof thereof demanded.

7. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7. The same is therefore denied and strict proof thereof demanded.

8. Admitted.

9. Denied. Interest at the rate of 7.5% on the unpaid balance was never discussed with Defendant or any agent of his, nor did he have any understanding, nor did he ever agree, that any unpaid balance not paid within thirty (30) days would accrue interest at the rate of 7.5% per annum.

10. It is admitted that demand has been made upon Defendant to pay the balance due. Defendant has paid various amounts on this account.

11. Admitted.

WHEREFORE, Defendant requests that the Complaint of Plaintiff, Robbins Lumber Company, LLC, be dismissed, with prejudice and costs of suit.

NEW MATTER

In further answer to Plaintiff's Complaint Defendant avers the following New Matter:

COUNT I
Breach Of Contract - Defective Lumber

12. As to any agreement Plaintiff negotiated whereby the Plaintiff would provide Defendant lumber, that lumber was to be merchantable and of good quality and fit for use.

13. The lumber provided was of extremely poor quality and not merchantable and furthermore not fit for use or for the purpose for which it was intended.

WHEREFORE, Defendant requests that the Complaint of Plaintiff, Robbins Lumber Company, LLC, be dismissed, with prejudice and costs of suit.

COUNTERCLAIM

In further answer to Plaintiff's Complaint Defendant sets forth the following Counterclaim:

COUNT I
Breach Of Contract - Defective Lumber

14. The Defendant herein incorporates by reference paragraphs 1 - 13 of this pleading.
15. The charges for lumber provided were excessive.
16. The quality of the lumber provided did not substantiate the charges made for the same.

WHEREFORE, Defendant requests judgment against the Plaintiff, Robbins Lumber Company, LLC, in an amount in excess of \$10,000.00 plus costs of suit.

COUNT II
Breach Of Contract - Defective Lumber

17. The Defendant herein incorporates by reference paragraphs 1 - 16 of this pleading.
18. As to any agreement Defendant negotiated whereby the Plaintiff would provide Defendant lumber, Plaintiff was aware that the lumber was to be used for the construction of stair treads.
19. In conjunction with its performance under any such agreement, Plaintiff made express warranties to the Defendant and/or such warranties of merchantability were implied as prescribed under the Uniform Commercial Code, with respect to the lumber and the fitness for the use intended by Defendant.

20. The lumber delivered to Defendant under any such agreement failed in material respects to conform to the specifications agreed to by the parties.

21. The lumber delivered to Defendant under any such agreement failed in material respects to conform to the express warranties and/or implied warranties of merchantability and fitness for the particular purpose intended by Defendant.

22. Defendant notified Plaintiff that much of the lumber received from the Plaintiff was defective and failed to satisfy the required specifications and to meet represented standards of the Defendant and/or the express and/or implied warranties of merchantability under the law.

23. Because of Plaintiff's breaches of contract, breaches of warranty, and failure to provide conforming goods, Plaintiff has sustained substantial and excessive losses in the following amount:

(a) The difference between the purchase price of the lumber and the value of the lumber actually delivered to Defendant is in excess of \$5,000.00.

(b) Lost profits of stair treads not sold due to Defendant's failure to supply sufficient stair treads, in an amount in excess of \$5,000.00.

24. As a direct result of the breaches of warranty by Plaintiff, both express and implied, Defendant has sustained

total damages and has the right to recover the amount of \$10,000.00, together with interest.

WHEREFORE, Defendant requests judgment against the Plaintiff, Robbins Lumber Company, LLC, in excess of \$10,000.00, plus interest and costs of suit.

Respectfully submitted,


Querino R. Torretti, Esquire
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA:
SS
COUNTY OF JEFFERSON :
:

Aaron A. Hershberger, being duly sworn according to law
deposes and says that the facts set forth in the foregoing
Answer And New Matter are true and correct to the best of his
knowledge, information, and belief.

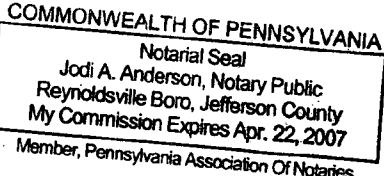


Aaron A. Hershberger

Sworn to an subscribed
before me this 30th day
January, 2006.



Jodi A. Anderson
Notary Public



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

ROBBINS LUMBER COMPANY, LLC, : *2005*
Plaintiff : No. 205-1989-CD
: :
: CIVIL DIVISION
vs. : :
: :
: :
AARON A. HERSHBERGER :
Defendant : :

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 30th, 2006, a true and correct copy of Defendant, Aaron A. Hershberger's Answer, New Matter, And Counterclaim regarding the above matter, was served on the following via United State Mail, first class, postage pre-paid:

Attorney for Plaintiff
Peter F. Smith, Esq.
Attorney at Law
30 South Second Street
PO Box 130
Clearfield, PA 16830



Querino R. Torfetti, Esquire

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

ROBBINS LUMBER COMPANY, LLC,
Plaintiff

No. 2005-1989-CD

vs.

AARON A. HERSHBERGER,
Defendant

Type of Case:
CIVIL

Type of Pleading:
**PLAINTIFF'S RESPONSE TO
DEFENDANT'S NEW MATTER
AND COUNTERCLAIM**

Filed on Behalf of:
PLAINTIFF

Counsel for This Party:
Peter F. Smith, Esquire
Supreme Court No. 34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

Counsel of Record for Defendant:
Querino R. Torretti, Esquire
Supreme Court No. 23996
600 East Main Street
P. O. Box 218
Reynoldsville, PA 15851
(814) 653-2243

FILED *cc*
03/23/01 *Atty Smith*
FEB 24 2006
LM
William A. Shaw
Prothonotary/Clerk of Courts

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

ROBBINS LUMBER COMPANY, LLC,	:	
Plaintiff	:	No. 2005-1989-CD
vs.	:	
AARON A. HERSHBERGER,	:	
Defendant	:	
	:	

PLAINTIFF'S RESPONSE TO DEFENDANT'S NEW MATTER AND COUNTERCLAIM

COMES NOW, ROBBINS LUMBER COMPANY, LLC, by its attorney Peter F. Smith, who states the following in support of this complaint:

1 - 11. Paragraphs 1 through 11 of the Complaint are incorporated herein by reference as though set forth in full.

NEW MATTER

12. Denied as stated. Defendant contacted Mr. Robbins and stated that he needed lumber for stair treads and what kind of lumber he needed. Mr. Robbins informed Defendant of the quantity and price of the lumber of that grade he had available. Mr. Hershberger then purchased and accepted ten deliveries of this lumber over a period of 5 1/2 weeks. No objections were made to any delivery nor were any objections made by Mr. Hershberger for over one year subsequent to these transactions.

13. Denied for the reasons set forth in paragraph 12.

WHEREFORE, Defendant's prayer that the Complaint be dismissed should be denied.

COUNTERCLAIM
Count I
Breach of Contract - Defective Lumber

14. Paragraphs 1 through 13 of this response are incorporated herein by reference.
15. Denied. The parties negotiated an armslength sales contract. Defendant is legally obligated to pay for the lumber which he received.
16. Denied for the reasons set forth in paragraphs 12 and 15 above.

WHEREFORE, Defendant's prayer for judgment against the Plaintiff should be denied.

Count II
Breach of Contract - Defective Lumber

17. Paragraphs 1 through 16 of this response are incorporated herein by reference.
18. Denied as stated. Although Mr. Robbins was advised that the lumber would be used for stair treads, Defendant specified the species and quality of lumber which the Defendant desired. He made this decision, not Mr. Robbins.
19. Denied for the reasons set forth in paragraph 12 and 18 above. Further denied because Defendant is in the lumber milling business. He thoroughly inspected the lumber before purchasing it. He was and is wholly responsible for determining whether or not the lumber was suitable for his intended purpose. Any subsequent problems with the lumber or the items milled from it are Defendant's responsibility alone.

The Defendant then accepted ten deliveries of this lumber over a period of 5 ½ weeks without objection. He had adequate opportunity to inspect, mill and determine its quality, and the lumber obviously conformed to the specifications which Mr. Hershberger established.

20. Denied for the reasons set forth in paragraphs 12 and 19 above.
21. Denied for the reasons set forth in paragraphs 12 and 19 above.

22. Denied. To the contrary, when Plaintiff contacted Defendant because of Defendant's failure to pay for the lumber, Defendant assured him that he would pay in full and pay interest as well. The Defendant did mention that problems had occurred, but the Defendant took full responsibility for those problems. He did not blame the Plaintiff and did not advance these problems as a reason for not paying the Plaintiff.

23. Denied. Any loss that the Defendant may have sustained is a result of his own action, inaction, negligence or ignorance.

24. Denied for the reasons set forth in paragraphs 12, 19 and 22 above.

WHEREFORE, Plaintiff prays that Defendant's demand for judgment be denied.

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Plaintiff

Date: February 24, 2006

VERIFICATION

I verify that the statements made in this response to New Matter and Counterclaim are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

ROBBINS LUMBER COMPANY, LLC

Dated: 2/17/06



E. Lynn Robbins, Manager

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

ROBBINS LUMBER COMPANY, LLC,
Plaintiff

: No. 2005-1989-CD

vs.

AARON A. HERSHBERGER,
Defendant

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for Plaintiff in the above-captioned matter, certify that I sent a true and correct copy of **PLAINTIFF'S RESPONSE TO DEFENDANT'S NEW MATTER AND COUNTERCLAIM** to the Attorney for the Defendant by U.S. First Class Mail, Postage Prepaid, on February 24, 2006 at the following address:

Querino R. Torretti, Esquire
600 E. Main Street
P. O. Box 218
Reynoldsville, PA 15851

Date: February 24, 2006



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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101103
NO: 05-1989-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: ROBBINS LUMBER COMPANY, LLC
vs.
DEFENDANT: AARON A. HERSHBERGER

SHERIFF RETURN

NOW, December 30, 2005 AT 3:00 PM SERVED THE WITHIN COMPLAINT ON AARON A. HERSHBERGER DEFENDANT AT EMPLOYMENT: ACE PANELS, EVERGREEN ROAD, LUTHERSBURG, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO AARON A. HERSHBERGER, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	SMITH	9017	10.00
SHERIFF HAWKINS	SMITH	9017	34.49

FILED

MAR 15 2006
0/3:16 LM

William A. Shaw
Prothonotary

Sworn to Before Me This

____ Day of _____ 2006

So Answers,

*Chester A. Hawkins
by Marilyn Hamps*
Chester A. Hawkins
Sheriff

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

ROBBINS LUMBER COMPANY, LLC,

Plaintiff

: No. 2005-1989-CD

vs.

AARON A. HERSHBERGER,

Defendant

PRAECIPE TO DISCONTINUE

3126
Proth -
File + Code
Z-TFWDA
DF

To: William A. Shaw, Prothonotary

Dear Sir:

As counsel for the Plaintiff in the above-captioned matter, I appear and request that the judgment entered against AARON A. HERSHBERGER, be marked DISCONTINUED.

Respectfully submitted,

Date: 3-25-13



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

FILED No cc
01 2:21pm

S MAR 26 2013

64
William A. Shaw
Prothonotary/Clerk of Courts