

Mechanical Liens

Date		Judge
4/27/2006	New Case Filed. Filing: Claim for Mechanics' Lien Paid by: Olbermayer Rebmann Maxwell Receipt number: 1913525 Dated: 04/27/2006 Amount: \$20.00 (Check) 2CC Atty.	No Judge No Judge
5/23/2006	Sheriff Return, May 19, 2006 at 11:15 am served the within Mechanic's Lien Claim on Gortech Global Fabrication Inc. May 19, 2006 at 11:15 am served the within Mechanic's Lien Claim on ICP Global Holdings Inc. May 19, 2006 at 11:15 am served the within Mechanic's Lien Claim on ICP Asset Management Inc. May 19, 2006 at 11:15 am served the within Mechanic's Lien Claim on Giuseppe's Finer Foods Inc. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Obermayer \$93.30	No Judge
6/5/2006	Affidavit of Service filed. On May 19, 2006 at 11:15 am, I caused a Claim for Mechanics' Lien to be served be hand delivery upon respondent Gortech Global Fabrication Inc., by Clearfield County Sheriff, filed by s/ Marc I. Simon Esq. No CC. Affidavit of Service filed. On May 19, 2006 at 11:15 am I caused a Claim for Mechanics' Lien to be served be hand delivery upon respondent ICP Global Holdings Inc. by Clearfield County Sheriff, filed by s/ Marc I. Simon Esq. No CC. Affidavit of Service filed. On May 19, 2006 at 11:15 am I causes a Claim for Mechanics' Lien to be served by hand delivery upon Giuseppe's Finer Food Inc., by Clearfield County Sheriff, filed by s/ Marc I Simon Esq. NO CC. Affidavit of Service filed. On My 19, 2006 at 11:15 am , I Caused a Claim for Mechanics' Lien to be served by hand delivery upon respondent ICP Asset Management Inc., by Clearfield County Sheriff, filed by s/ Marc I Simon Esq. No CC.	No Judge No Judge No Judge No Judge
6/27/2006	Preliminary Objections, filed by s/ Christopher E. Mohney, Esquire. 3CC Atty. Mohney	No Judge
7/3/2006	Order, AND NOW, this 30 day of June, 2006, upon consideration of Respondents' Preliminary Objections, Ordered that a hearing is scheduled for the 23rd day of August, 2006, at 3:00 p.m. in Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. Three CC Attorney Mohney	Fredric Joseph Ammerman
7/5/2006	Certificate of Service, filed. That on the 27th day of June 2006 served certified true and correct copies of Preliminary Objections and Brief on Gary M. Samms Esq., filed by s/ Christopher E. Mohney Esq. NO CC.	Fredric Joseph Ammerman
7/11/2006	Certificate of Service, on the 10th day of July, 2006, served by 1st Class Mail, certified copy of Order of Court dated June 30, 2006 upon Gary M. Samms, Esq. Filed by s/ Christopher E. Mohney, Esquire. No CC	Fredric Joseph Ammerman
8/17/2006	Response to Preliminary Objections to Claim for Mechanics' Lien And Accompanying Memorandum of Law, filed by s/ Gary M. Samms, Esquire. No CC	Fredric Joseph Ammerman
8/18/2006	Order, NOW, this 18th day of August, 2006, upon consideration of the Motion for Continuance of plaintiff, Ordered that Oral Argument currently scheduled for August 23, 2006 is rescheduled for Oct. 2, 2006 at 10:30 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Atty Motion For Continuance, filed by Gary M. Samms Esq. 1 CC to atty.	Fredric Joseph Ammerman Fredric Joseph Ammerman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

RE: Deed of Trust of FRANK J.) No. 92-517
SHAKESPEARE, deceased;)
Estate of FRANK J.)
SHAKESPEARE, deceased.)

RE: Deed of Trust of BEN)
SHAKESPEARE, deceased.) No. 92-073
)

**PROPOSED CASE MANAGEMENT
ORDER**

**(PNC Account #10-01-001-566591)
(Frank Shakespeare for Howard
Shakespeare Residual)**

**(PNC Account #10-01-001-567775)
(Ben Shakespeare for Howard Shakespeare)**

**(PNC Account #10-01-001-0575700)
(Frank Shakespeare for Gwen Shakespeare)**

Filed on Behalf Of:

PNC Bank, N.A., Trustee
Counsel Of Record For This Party:
Gregory B. Jordan
Pa. I.D. No. 42105
Donna M. Doblick
Pa. I.D. No. 75394
REED SMITH LLP
435 Sixth Avenue
Pittsburgh, PA 15219
412.288.3131 (phone)
412.288.3063 (fax)

Date: 10/27/2006

Time: 11:01 AM

Page 2 of 2

Clearfield County Court of Common Pleas

ROA Report

Case: 2006-00651-CD

Current Judge: Fredric Joseph Ammerman

User: DPAYNE

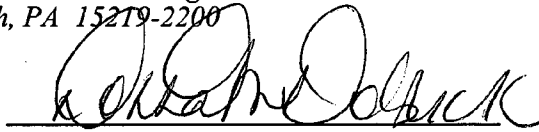
Mechanical Liens

Date		Judge
10/5/2006	Order, NOW, this 2nd day of Oct., 2006, Plaintiff's counsel may have no more than 7 days from this date in which to provide further brief to the Court. The letter brief may be submitted to the Court via fax. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: G. Samms, Mohny, G. Teufel, S. Heineman	Fredric Joseph Ammerman

CERTIFICATE OF SERVICE

I, Donna M. Doblick, one of the attorneys for PNC, hereby certifies that she caused a true and correct copy of the foregoing Proposed Case Management Order to be served upon the following via U.S. mail, first class, postage prepaid, this 17th day of August, 2006:

Charles J. Avalli
Goldberg, Gruener, Gentile Horoho & Avalli, P.C.
310 Grant Street
Suite 230 Grant Building
Pittsburgh, PA 15219-2200



**COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL ACTION-(LAW)**

Refrigeration Service & Engineering, Inc.
75 Industrial Parkway
Pottstown, PA 19464

Claimant

v.

Giuseppe's Finer Foods, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

Gortech Global Fabrication, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Asset Management, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

NO. De-651-CD

Type of Case: Mechanics' Lien

Type of Pleading: Claim for Mechanics' Lien

Filed on Behalf of: Refrigeration Service and
Engineering Inc

Counsel of Record for this Party: Gary M. Samms

Supreme Court No: 58096

OBERMAYER REBMANN MAXWELL & HIPPEL, LP
1617 John F. Kennedy Boulevard
One Penn Center, 18th Floor
Philadelphia, PA 19103
(215) 665-3109

Dated: April 25, 2006

FILED Any pd. 20.00
m 11:17 AM
APR 27 2006 cc Any
(5)

William A. Shaw
Prothonotary/Clerk of Courts

OBERMAYER REBMANN MAXWELL & HIPPEL, LLP

By: Gary M. Samms, Esquire
Pennsylvania I.D. No.: 58096
1617 John F. Kennedy Boulevard
One Penn Center, 18th Floor
Philadelphia, PA 19103-1895
(215) 665-3000

Attorney for Claimant,
Refrigeration Service & Engineering, Inc.

Refrigeration Service & Engineering, Inc.
75 Industrial Parkway
Pottstown, PA 19464

Claimant,

v.

Giuseppe's Finer Foods, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

Gortech Global Fabrication, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Asset Management, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY

APRIL TERM, 2006

NO.

CLAIM FOR MECHANICS' LIEN

Claimant, Refrigeration Service & Engineering, Inc. (RSE), 75 Industrial Parkway,

Pottstown, PA 19464, files this claim against the improvements and property at 2592 Oklahoma


Salem Road, DuBois, PA 15801, for the payment of a debt due to claimant as a contractor for labor and materials furnished by claimant for erection and construction of an ammonia refrigeration system. In support of the claim, the claimant makes the following statement:

1. RSE is a Pennsylvania Corporation with its principal place of business located at the above-captioned address.
2. The property and improvements, (collectively, the "Property") that are the subject of this claim are located at 2592 Oklahoma Salem Road, DuBois, PA 15801 and consist of an ammonia refrigeration system, a warehouse and appurtenant land.
3. The owner of the subject property is ICP Global Holdings Inc., a Pennsylvania Corporation. Upon information and belief, its principal place of business is 2592 Oklahoma Salem Road, DuBois, PA 15801.
4. Giuseppe's Finer Foods, Inc., is a Pennsylvania Corporation. Upon information and belief, its principal place of business is 2592 Oklahoma Salem Road, DuBois, PA 15801.
5. ICP Asset Management, Inc. (ICP), is a Pennsylvania Corporation. Upon information and belief, its principal place of business is 2592 Oklahoma Salem Road, DuBois, PA 15801.
6. Gortech Global Fabrication, Inc. is a Pennsylvania Corporation. Upon information and belief, its principal place of business is 2592 Oklahoma Salem Road, DuBois, PA 15801.
7. Upon information and belief, Giuseppe's, ICP and Gortech, hold a leasehold interest in the property located at 2592 Oklahoma Salem Road, DuBois, PA 15801.
8. Upon information and belief, Giuseppe's, ICP and Gortech are the agents of one another and/or of ICP Global Holdings Inc.
9. Upon information and belief, Giuseppe's, ICP and Gortech are the alter egos of one another and of ICP Global Holdings Inc.

10. Upon information and belief, Giuseppe's, ICP and Gortech and ICP Global Holdings Inc. all have similar incorporators, directors and officers.
11. Between March 11, 2005 and January 3, 2006, pursuant to a proposal submitted by RSE to Giuseppe's and subsequent purchase order submitted by Gortech, RSE supplied and installed an ammonia refrigeration system to provide conditioned space and process cooling ("Refrigeration System"), at the Property (with the Refrigeration System, the "Work"). The proposal from RSE to Giuseppe's is attached hereto as Exhibit "A". The purchase order, signed by Gortech CFO/Executive V.P., Kenneth J. Mitchell, describing and setting forth the costs of the materials supplied, is attached hereto as Exhibit "B".
12. During the Work, RSE submitted numerous change orders, on which Gortech agreed to pay the additional costs. A copy of the change orders sent from RSE are attached hereto as Exhibit "C".
13. Invoices detailing work performed and the respective costs for labor and materials were provided by RSE to Gortech, on a regular basis and serve as an accurate and complete record of the work performed on the Property by RSE. These invoices are attached hereto as Exhibit "D".
14. The total cost for the Work and materials supplied by RSE, including the change orders, was \$2,227,214. A copy of the Transaction Details is attached hereto at Exhibit "E".
15. RSE has been paid \$1,584,369 of the total amount due and owing. Copies of the checks received by RSE from ICP Asset Management Inc. are attached hereto as Exhibit "F".
16. The unpaid balance for the labor and materials supplied by RSE is \$642,845.
17. The claimant completed its work on January 3, 2006, which is less than four (4) months before filing of this claim.
18. Despite repeated demands by RSE, RSE has not received payment for the labor and materials supplied.

WHEREFORE, claimant RSE, hereby requests judgment and that a Mechanics' Lien be entered against the property interests of ICP Global Holdings Inc., ICP Asset Management Inc., Gortech Global Fabrication Inc. and Giuseppe's Finer Foods, Inc., in the amount of \$642,845.

OBERMAYER REBMANN MAXWELL & HIPPEL LLP



GARY M. SAMMS
Attorney for Claimant,
Refrigeration Service & Engineering, Inc.

VERIFICATION

I, Robert Hepp, hereby state that (a) I am authorized to make this Verification on behalf of Claimant, Refrigeration Service & Engineering, Inc., (b) the facts set forth in the foregoing Claim for Mechanics' Lien are true and correct to the best of my knowledge, information and belief; and (c) this statement is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'R. Hepp', is written over a horizontal line.

ROBERT HEPP

RSE**Refrigeration Service and Engineering, Inc.**

75 Industrial Parkway

Pottstown, PA 19464

Telephone (610) 495-1972 Fax (610) 495-1973

Email RSENH3@aol.com

March 11, 2005

Giuseppe's Finer Foods

2592 Oklahoma Salem Rd.

PO Box 687

DuBois, PA 15801

Phone (814) 372-5409

Fax (814) 375-0364

Attn: Mr. Luke Sicard II, PE.

Re: Ammonia Refrigeration System

Dear Mr. Sicard:

RSE is pleased to quote on the new refrigeration system for the Giuseppe's facility in Dubois, PA. The refrigerated areas include the following:

- +70°F Packaging -- 2 Units
- +70°F Receiving
- +70°F Culture Tank
- +70°F Sauce Fill
- +70°F Cheese Fill
- +70°F Batch Cook
- +70°F Cheese Blend
- +70°F Bin Dump
- +70°F F Cheese Grind
- +36°F Cooler
- One (1) Contherm with 3 Stages (2 Cylinders per stage)
- Process Water Chill Loops (TUCS, Spray Chiller & Main)

Air Handling Units

Ten (10) Air Handling Units will be supplied per the specifications received during the RSE meeting on 1-20-05. Each unit will be provided with ammonia cooling. RSE will rig and set all units on steel frames supplied by Giuseppe's. Each unit will be equipped with a PLC controller, that in the event any of the (10) controllers fail, the other 9 units will continue operating. All the individual PLC units will be monitored through the supervisory controls system. The culture tank unit will be the only unit having UV lights. The unit sizing was based on the following room sizes:

- +70°F Packaging 32,000 sq. ft. @ 26' High
- +70°F Receiving 6,600 sq. ft. @ 26' High
- +70°F Culture Tank 760 sq. ft. @ 20' High
- +70°F Sauce Fill 7,300 sq. ft. @ 20' High
- +70°F Cheese Fill 1,650 sq. ft. @ 20' High

- +70°F Batch Cook 3,800 sq. ft. @ 20' High
- +70°F Cheese Blend 2,050 sq. ft. @ 20' High
- +70°F Bin Dump 1,350 sq. ft. @ 20' High
- +70°F Cheese Grind 750 sq. ft. @ 16' High

Ductwork

RSE to supply insulated metal panel ductwork for ten (10) units. The panels will have a stainless steel interior surface and the ductwork will be installed on galvanized roof stands.

Air Diffusers/Returns

RSE to provide supply air diffusers equipped with stainless steel construction and return boxes of stainless steel construction as manufactured by the AHU supplier.

+36°F Cooler

RSE to supply two (2) ceiling hung evaporators to cool the 10,000 sq. ft. x 25' high blast cooler with a load requirement of 80 TR. We are providing two (2) 20 TR evaporators in the base bid with an add price for (2) two additional 20 TR evaporators. In our base bid we are including header valves for the two (2) future evaporators. The cooler is now located close to the entrance of the office.

Contherm

RSE to pipe to the customer supplied Contherm. The total load for the Contherm is 105 TR at a +20°F Suction. RSE will supply the following:

- (3) Surge Drums with float level controls
- (3) Suction Control Stations with isolation valves
- (3) Relief Valves
- (3) Hot gas solenoids, checks and isolation valves
- (3) Liquid line solenoids, HEV and isolation valves
- Rigging, setting of surge drums
- Piping from equipment room to Contherms
- Insulation as required

All wiring and control of the Contherms is by others. All rigging and setting of the heat exchanger is by others. Startup is by Alfa Laval Contherm.

Process Water Cooling

RSE to provide the following (please note that this quote reflects the pricing of APV heat exchangers since Alfa Laval was not able to quote in time. If need be, pricing will be adjusted accordingly):

- Cooling tower and water to water heat exchanger that will cool the process water from 105°F to 83°F using 1660 GPM of tower water. This load is 1350 TR.
- Ammonia water chiller to cool 350 GPM of process water from 83°F to 50°F for the Spray Chiller water. This load is sized for 480 TR.
- Ammonia water chiller to cool 625 GPM of process water from 56°F to 50°F for the TUCS water system. This load is sized for 180 TR.

Engine Room Equipment

- (1) Screw Compressor dedicated at +40°F SST, approximately 323 TR. This compressor will require a 250 HP motor.

- (1) Screw Compressor operating at either +40°F SST or +20°F SST. The capacities will be 261 TR and 171 TR respectively. The compressor will require a 200 HP Motor.
- (1) Screw Compressor dedicated at +20°F SST, approximately 52 TR. The compressor will require a 75 HP motor.
- (3) Motors and Solid state starters for the screw compressor packages
- (3) Screw compressor control panels mounted and wired on packages
- (1) Evaporative condenser sized to meet the above three (3) compressors
- (1) VFD Controller for evaporative condenser fan.
- (1) Lot refrigerant pressure vessels, surge drums, pumps, etc.

Liquid Transfer System

RSE to supply an automatic liquid transfer system to eliminate nuisance shutdowns and protect the screw compressor packages during system fluctuations. The unit will be mounted, piped and wired.

Control System

One (1) Central Control System to monitor and control the refrigeration system components. This system will communicate with the compressor panels and AHU panels. The control system will include the following

- Computer, monitor, keyboard, mouse, printer, modem, etc.
- Control system hardware, processor, boards, enclosure, etc.
- Digital and analog cards as required
- Battery backup
- Power supply
- Wonderware Graphics Package
- Alarm annunciation in order of occurrence
- Dry contacts for customer tie-in to alarm and fire company
- Historical trending of analog devices
- Run time history of components
- Password protection
- Graphical screens include:
 - Overall floor plan with room temperatures
 - Submenus for changing room setpoints
 - AHU displays for each unit
 - Compressor displays for each compressor
 - Cooler defrost sequence and scheduling
 - Ammonia detection readings where applicable
 - Vessel levels
 - Pump status
 - Condenser display of fans and pumps
- Future sizing for expanded plant
- Full startup and training of system

Miscellaneous Items Included

RSE will also include the following:

- Installation labor as for RSE equipment (as noted)
- Startup and training labor
- Control wiring for RSE installed equipment
- Insulation and vapor barriers for required refrigerant piping and vessels

- PVC jackets on insulation for interior and aluminum jacket on roof
- Ammonia control and isolation valves
- Ammonia relief valves
- Ammonia pipe and fittings
- Ammonia charge and charging
- Ammonia valve tags
- Ammonia pipe labels
- Water pumps
- Weld machines, consumables, gas, oxy acetylene
- Rigging, crane rentals, lifts, etc.
- Secondary steel for cooler evaporators
- Concrete pads for RSE supplied equipment
- Freight for all equipment to Dubois, PA

Net price for the above BOM as described herein is \$ 2,350,000.00

Net add for Stamped Drawings by a Licensed PE in PA is \$ INCLUDED

Net add for PSM for the above system is \$ INCLUDED

Adder for supply and installation of two blast cooler units in addition to the two units included in the base bid for a total of 80 TR in the Cooler: \$ 48,000.00

Items not included

- General construction of building
- Primary steel for RSE supplied equipment, roof curbs, etc.
- Power wiring, starters, feeders, disconnects, generators, etc.
- Any and rigging and setting of contherms
- Primary transformers for plant
- Any and all demolition of existing walls or equipment
- Any and all roofing or patching of roof
- Any and all concrete footings, pilings, excavation
- Any and all city water piping and backflow preventers
- Any and all premium time labor
- Any and all water treatment
- Any and all water supply to condenser and tower in excess of 15'
- Any and all fresh air, exhaust or engine room heat
- Any and all dilution tanks, emergency boxes
- Any and all sprinklers and floor drains
- Any and all sales tax and permits

DEDUCT OF \$ 59,980.00
FOR COMBINING
MAU

REVISED CONTRACT VALUE

\$ 2,290,020.00

R.E. HARRIS
[Signature]

Thank you for the opportunity to provide this quotation. Please call should you have any questions.

Sincerely,

Ryan Snyder, PE

ACCEPTANCE
GIUSEPPE FINER FOODS

NAME

DATE

PURCHASE ORDER NO.

PAYMENT TERMS

- 20% Down at time of order placement
- Invoices due immediately upon major equipment arrival
- Assume normal AIA documents
- Progress Billings due upon receipt



VENDOR

Refrigeration Service & Engineering
75 Industrial Parkway
Pottstown, PA 19464

PAGE NO.	P.O. NO.	ORDER DATE	VEND NO.
1	10293	4/5/2005	

PURCHASE ORDER

SHIP TO

Giuseppe's Finer Foods
2592 Oklahoma Salem Road
PO Box 687
DuBois, PA 15801
814-375-0516

ORDER DATE 4/5/2005	CANCELLATION DATE 5/5/2005	SHIP VIA	F.O.B.	TERMS		
JOB# / FOR Shop		RESPONSIBILITY Todd Gordon	BRANCH Gortech			
ITEM NO. MFG NO.	DESCRIPTION	QUANTITY ORDERED	UM	QTY REC	UNIT PRICE	EXTENSION
	AMONIA REFRIGERATION SYSTEM	1	EA		2,350,000.00	\$2,350,000.00
	DEDUCT FOR COMBINING BIN DUMP/BATCH COOK AND CHEESE BLEND/GRIND INTO SINGLE UNITS	1	EA		(59,980.00)	(\$59,960.00)
	20% DOWN WITH ORDER, PROGRESS BILLS DUE UPON RECEIPT					
					SUBTOTAL	\$2,290,020.00
					TAX	
					SURCHARGES	
					TOTAL	\$2,290,020.00

AUTHORIZED SIGNATURE

ORDER TERMS AND CONDITIONS

1. INVOICES must bear exact same prices and terms or authorization for changes must be received from our company in writing prior to shipping.
2. Goods not in accordance with specifications will be rejected and held at vendor's risk awaiting disposal. Vendor must pay freight on all rejected material.
3. The right is reserved, to cancel all or part of this order if not delivered within the time specified.
4. Packing slips must accompany all shipments.
5. By acceptance of this order, vendor warrants that all merchandise shipped under this order does comply with all laws and regulations of Federal and State governments.
6. Back orders must be prepaid when less than a minimum freight shipment.
7. In the event of interruption of our business in whole or in part by reason of fire, flood, windstorm, earthquake, war, strike, embargo, acts of God, government action, or any cause beyond our control, we shall have the option of canceling undelivered orders in whole or part.
8. Acceptance of this purchase order, or shipment of any part of it will constitute an agreement to all of its specifications as to terms, delivery and price.

RSE**Refrigeration Service and Engineering, Inc.**

75 Industrial Parkway, Suite B

Pottstown, PA 19464

Telephone (610) 495-1972 Fax (610) 495-1973

Email RSENTHree@aol.com

Change Order

Customer: Giuseppes Location: DuBois, PA Date: 5/1/05
Attention: Luke Sicard Job: 105-1723 C.O.#: 1

Scope of Work:

This change notice address the change in combination of the Make Up Air Units as
described in the attachment.

Reason for change:

Per customer's request.

Schedule:

No schedule impact

Person requesting change: Luke Sicard

Cost: \$18,145.00

With authorized signature below, the customer agrees to the terms and conditions of this change order.

Signature: _____

Date: _____

Subj: **Make Up Air Unit Selection**
Date: 4/26/2005 1:11:42 PM Eastern Standard Time
From: Rsenhthree
To: lsicard@giuseppesfinerfoods.com
CC: george@mpeconsulting.com

Luke & George,

As a result of our conversations, I went through the make up air unit selection.

The initial room combination of the Cheese Blend and Cheese Grind resulted in the selection of a CPA-6-95. The Cheese Fill Room utilized a CPA-4 unit.

The revised combination of Cheese Blend and Cheese Fill result in the selection of a CPA-12-99. The Cheese Grind Room will utilize a CPA-2 unit.

The larger unit selection (going from CPA-6 to CPA-12) for the Blend & Fill rooms results in an increase of \$25,450.00.

The smaller unit required for the Cheese Grind Room (going from CPA-4 to CPA -2) results in a deduction of \$7,305.00.

The net result is an increase in the cost of the units of \$18,145.00.

It was also mentioned that an additional ingredient unit was to be added. I will need the room data to make the necessary selection.

Please let me know how I should proceed on the above.

Thanks

Bob Hepp

RSE**Refrigeration Service and Engineering, Inc.**

75 Industrial Parkway, Suite B

Pottstown, PA 19464

Telephone (610) 495-1972 Fax (610) 495-1973

Email RSENHThrec@aol.com

Change Order

Customer: Giuseppes Location: DuBois, PA Date: 5/1/05
Attention: Luke Sicard Job: I05-1723 C.O.#: 2

Scope of Work:

This change notice address the supply and installation of ammonia leak detectors in the supply air duct of each make up air unit (total of eight). Also included is all necessary wiring, and control changes.

Reason for change:

Per customer's request.

Schedule:

No schedule impact

Person requesting change: Luke Sicard

Cost: \$16,250.00

With authorized signature below, the customer agrees to the terms and conditions of this change order.

Signature: _____

Date: _____

RSE**Refrigeration Service and Engineering, Inc.**

75 Industrial Parkway, Suite B

Pottstown, PA 19464

Telephone (610) 495-1972 Fax (610) 495-1973

Email RSENHthree@aol.com

Change Order

Customer: Giuseppe'S Location: DuBois, PA Date: 08/04/05
Attention: Mr. Luke Sicard Job: 105-1723 C.O.#: 3

Scope of Work:Supply and install engine room ventilation system.Reason for change:Required per codeSchedule:Scope will not effect schedulePerson requesting change: Luke SicardCost:

\$31,800.00

With authorized signature below, the customer agrees to the terms and conditions of this change order.

Signature: _____

Date: _____

RSE**Refrigeration Service and Engineering, Inc.**

75 Industrial Parkway

Pottstown, PA 19464

Telephone (610) 495-1972 Fax (610) 495-1973

Email RSENH3@aol.com

August 2, 2005

Giuseppe's Finer Foods

2592 Oklahoma Salem Rd.

PO Box 687

DuBois, PA 15801

Phone (814) 372-5409

Fax (814) 375-0364

Attn: Mr. Luke Sicard II, PE.

Subject: Engine Room Ventilation System

Dear Luke:

The engine room being constructed at your Dubois, PA facility will require a ventilation system to be installed in accordance with the guidelines set forth by ASHRAE 15.0. These guidelines require the following:

- Ventilation Fans – These will support continuous exhaust, emergency exhaust and temperature control.
- Motorized Louvers – These will allow for adequate inlet air flow for the exhaust fans.
- Independent Control Panel – A control panel that will detect ammonia and control the fans and louvers (this panel is to be independent of the main control system).
- Necessary Exterior Controls – The required beacons and switches to be mounted exterior the engine room.

Scope of Work

Installation of three fans, two ammonia sensors, thermostat(s), control panel, beacons and switches will be performed. Control wiring of the system is shown as a separate line item.

The three fans will be supplied (with required roof curbs) for the main engine room and mounted between the condenser and cooling tower. Ammonia sensors will be mounted within the engine room and in the exhaust air stream. Thermostats will be mounted the compressor area to keep room temperatures at or below 90°F when possible. Outputs from the control panel are available to provide to main control system or auto-dialer. Upon completion the system will be tested for operation.

Cost

The cost for the above scope of work is: **\$31,800.00**

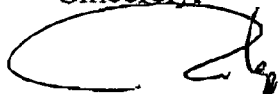
The cost for the control wiring of the equipment is: **\$17,500.00**

Exclusions / Clarifications

1. Overtime is not included.
 2. Sales / Use Tax is not included
 3. Roof repair is not included.
 4. Power wiring to the fans and control panel is not included.
-

We greatly appreciate the opportunity to discuss your refrigeration needs and hope this proposal is complete and acceptable.

Sincerely,



Robert E. Hepp

RSE**Refrigeration Service and Engineering, Inc.**

75 Industrial Parkway, Suite B

Pottstown, PA 19464

Telephone (610) 495-1972 Fax (610) 495-1973

Email RSENHthrec@aol.com

Change Order

Customer: Giuseppe'S Location: DuBois, PA Date: 08/22/05
Attention: Mr. Luke Sicard Job: 105-1723 C.O.#: 4

Scope of Work:Change control system from Wonderware to RS ViewReason for change:Per customer's requestSchedule:Scope will not effect schedulePerson requesting change: Luke SicardCost:

\$11,800.00

With authorized signature below, the customer agrees to the terms and conditions of this change order.

Signature: _____

Date: _____

RSE**Refrigeration Service and Engineering, Inc.**

75 Industrial Parkway

Pottstown, PA 19464

Telephone (610) 495-1972 Fax (610) 495-1973

Email RSENHTHREE@aol.com

FAX**From: Bob Hepp @ RSE****Date:** August 22, 2005**Phone:** (610) 495-1972**FAX:** (610) 495-1973**Subject:** Various Quotes**Attention:** George Bennett**Phone:** (814) 372-5409**Fax:** (814) 375-0364**Pages including cover:** 5

George,

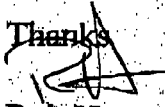
Attached please find the quotes we discussed. In addition, I wanted to provide a list of the previous change orders that have been agreed upon with Luke.

Change Orders:

1. Unit Combination Change – Initially units were combined in a different arrangement than the final design. Cost \$18,145.00.
2. Leak Detection Addition – It was decided to add leak detectors to each make up air unit air stream. Cost \$16,250.00.
3. Control System Change – Change from Wonderware to RS View. Cost \$11,800.00.
4. Structural Steel Design – Design of the steel structure. Cost \$9,600.00.

Please feel free to contact me with any questions that arise.

Thanks


Bob Hepp

RSE**Refrigeration Service and Engineering, Inc.**

75 Industrial Parkway, Suite B

Pottstown, PA 19464

Telephone (610) 495-1972 Fax (610) 495-1973

Email RSENHthree@aol.com

Change OrderCustomer: Giuseppe'S Location: DuBois, PA Date: 08/22/05Attention: Mr. Luke Sicard Job: I05-1723 C.O.#: 5

Scope of Work:

Supply and install refrigeration for cooler and freezer

Reason for change:

Per customer's request

Schedule:

Scope will not effect schedulePerson requesting change: Luke SicardCost:

\$36,900.00

With authorized signature below, the customer agrees to the terms and conditions of this change order.

Signature: _____

Date: _____

06-13-005 14:12 From-INTL CUSTOM PROD

+18143750718

T-101 P.001/004 F-162



2592 Oklahoma-Salem Road • P.O. Box 637
DuBois, PA 16801

PAGE NO.	P.O. NO.	ORDER DATE	VENDOR NO.
1	00212	8/14/2005	12006

PURCHASE ORDER

Y
C
N
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R
REFRIGERATION SERVICE &
ENGINEERING
75 INDUSTRIAL PARKWAY
FOOTSTOWN, PA 19464

S
H
I
P
T
O
Giuseppe's Finer Foods
2592 Oklahoma Salem Road
PO Box 687
DuBois, PA 16801

ORDER DATE	CANCELLATION DATE	SHIP VIA	F.O.B.	TERMS
8/14/2005	11/12/2005	BEST METHOD		NET 30
RESALE NO.	RESPONSIBILITY	BRANCH		

PER QUOTE - REV B

ITEM NO.
UP3, 10,

DESCRIPTION

REQ. DATE
LOCATIONQUANTITY
ORDEREDQUANTITY
BACK ORDQTY
REC

UNIT PRICE

EXTENSION

REFRIGERATION FOR COOLER & FREEZER

8/21/2005

1.00

36,900.00

36,900.00

+40 F COOLER (18' x 22' x 21' h)

+10 F FREEZER (20' x 22' x 21' h)

DOES NOT INCLUDE POWER WIRING, GEN
CONST

ROOF REPAIRS, UT LABOR, TAXES, FEES

SUBTOTAL

36,900.00

36,900.00

PURCHASE ORDER NO.

00212

TOTAL ORDER
VALUE

AUTHORIZED SIGNATURE

ORDER TERMS AND CONDITIONS

1. INVOICES must bear exact same prices and terms or authorization for changes must be received from our company in writing prior to shipping.
2. Goods not in accordance with specifications will be rejected and held at vendor's risk awaiting disposal. Vendor must pay freight on all rejected material.
3. The right is reserved to cancel all or part of this order if not delivered within the time specified.
4. Packing slips must accompany all shipments.
5. By acceptance of this order, vendor warrants that all merchandise shipped under this order does comply with all laws and regulations of Federal and State governments.
6. Back orders must be prepaid when less than a minimum freight shipment.
7. In the event of disruption of our business in whole or in part by reason of fire, flood, windstorm, earthquake, war, strike, embargo, acts of God, governmental action, or any causes beyond our control, we shall have the option of canceling undelivered orders in whole or part.
8. Acceptance of this purchase order, or shipment of any part of it will constitute an agreement to all of its specifications as to terms, delivery and price.

RSE**Refrigeration Service and Engineering, Inc.**

75 Industrial Parkway, Suite B

Pottstown, PA 19464

Telephone (610) 495-1972 Fax (610) 495-1973

Email RSENHthree@aol.com

Change Order

Customer: Giuseppe's Location: DuBois, PA Date: 08/22/05
Attention: Mr. Luke Sicard Job: I05-1723 C.O.#: 6

Scope of Work:Fabricate and install structural steel for make-up air units**Reason for change:**Per customer's request**Schedule:**Scope will not effect schedulePerson requesting change: Luke SicardCost:

\$83,750.00

With authorized signature below, the customer agrees to the terms and conditions of this change order.

Signature: _____

Date: _____

RSE**Refrigeration Service and Engineering, Inc.**

75 Industrial Parkway

Pottstown, PA 19464

Telephone (610) 495-1972 Fax (610) 495-1973

Email RSENH3@aol.com

August 22, 2005

Giuseppe's Finer Foods

2592 Oklahoma Salem Rd.

PO Box 687

DuBois, PA 15801

Phone (814) 372-5409

Fax (814) 375-0364

Attn: Mr. Luke Sicard II, PE.

Subject: Make Up Air Unit – Structural Steel

Dear Luke:

Based upon the structural element analysis that was performed and the steel frames that were designed, the following proposal has been prepared.

Scope of Work

Structural steel frames are to be fabricated and installed at the Make Up Air Locations that have been determined (Refer to the drawing set that has been forwarded).

The frames consist of the following:

- Under roof framework for units to transfer loads into the roof steel structure. This applies to all units except 7 & 8/9. However, these units require stiffening at the concrete wall to eliminate horizontal loads.
- Riser posts from the under roof frame to the above roof steel frame.
- Point to point additions to the existing joists.
- Above roof steel frame to accept the make up air units.

Frames will be prefabricated at the RSE facility and shipped to the job site. Roofing will need to be removed down to the roof decking by others. The decking will be opened to the joists below and prepared for the steel frames to be attached. Under roof frames will be set in place with a crane and attached to the existing joists. Roof repairs will need to be performed by others. The top frames will be set in place with the use of a crane and attached.

Proposal includes:

- Labor for structural steel prefabrication and installation
- Frame material
- Prefabrication of frames
- Shipment to site
- Decking preparation
- Setting & attaching of under roof frames
- Setting & attaching of above roof frames
- Necessary lift rentals (qty 2)
- Necessary crane rentals (qty of 4 days)
- Freight

Cost

The cost for the structural steel frames and installation:

\$83,750.00

Breakdown of the costs:

- **Material** \$14,400.00
- **Prefabrication Labor** \$29,900.00
- **Freight** \$2,000.00
- **Crane & Lift Rentals** \$6,500.00
- **Project Management** \$1,450.00
- **On Site Installation** \$29,500.00

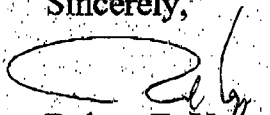
This proposal will be handled as a Time & Material, Not to Exceed proposal. As such proper documentation will be supplied.

Exclusions / Clarifications

1. Overtime is not included.
2. Sales / Use Tax is not included
3. Roof repair is not included.

We greatly appreciate the opportunity to discuss your refrigeration needs and hope this proposal is complete and acceptable.

Sincerely,



Robert E. Hepp

RSE**Refrigeration Service and Engineering, Inc.**

75 Industrial Parkway, Suite B

Pottstown, PA 19464

Telephone (610) 495-1972 Fax (610) 495-1973

Email RSENHthree@aol.com

Change Order

Customer: Giuseppe'S Location: DuBois, PA Date: 08/22/05
Attention: Mr. Luke Sicard Job: I05-1723 C.O.#: 7

Scope of Work:Perform engineering evaluation on structural steel for make-up air units**Reason for change:**Per customer's request**Schedule:**Scope will not effect schedulePerson requesting change: Luke SicardCost:

\$9,600.00

With authorized signature below, the customer agrees to the terms and conditions of this change order.

Signature: _____

Date: _____

RSE**Refrigeration Service and Engineering, Inc.**

75 Industrial Parkway, Suite B

Pottstown, PA 19464

Telephone (610) 495-1972 Fax (610) 495-1973

Email RSENHthree@aol.com

Change Order

Customer: Giuseppe'S Location: DuBois, PA Date: 08/22/05
Attention: Mr. Luke Sicard Job: I05-1723 C.O.#: 8

Scope of Work:

Supply labor and material to run gas line to supply gas to boiler, make-up air units and
various office heating units

Reason for change:

Per customer's request

Schedule:

Scope will not effect schedule

Person requesting change: Luke Sicard

Cost: \$45,000.00

With authorized signature below, the customer agrees to the terms and conditions of this change order.

Signature: _____

Date: _____

RSE**Refrigeration Service and Engineering, Inc.**

75 Industrial Parkway

Pottstown, PA 19464

Telephone (610) 495-1972 Fax (610) 495-1973

Email RSENH3@aol.com

August 22, 2005

Giuseppe's Finer Foods

2592 Oklahoma Salem Rd.

PO Box 687

DuBois, PA 15801

Phone (814) 372-5409

Fax (814) 375-0364

Attn: Mr. Luke Sicard II, PE.

Subject: Gas Supply Piping

Dear Luke:

Based on various discussions and a site walk through, the following proposal has been prepared.

Scope of Work

The supply line that is required to supply gas to the boiler, make up air units and various office heating systems needs to be installed. A six inch main will be started at the main feed run to the roof and then continue to the refrigeration pipe stands. At this point, the piping will run with the refrigeration piping until the branch for the boiler. Other feeds will be piped including the 2" main that feeds the south side of the plant, the make up air units and the east side office area.

Installation includes the supply of material, labor, isolation valves and regulators.

Cost

The cost for the gas piping described above is:

\$45,000.00

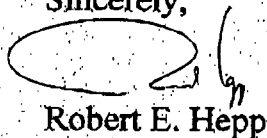
This proposal will be handled as a Time & Material, Not to Exceed proposal. As such proper documentation will be supplied.

Exclusions / Clarifications

1. Overtime is not included.
2. Sales / Use Tax is not included

We greatly appreciate the opportunity to discuss your refrigeration needs and hope this proposal is complete and acceptable.

Sincerely,



Robert E. Hepp

RSE Inc.

Refrigeration Service and Engineering, Inc.
 75 Industrial Parkway, Suite B
 Pottstown, PA 19404
 Phone (610)495-1972 - Fax (610)495-1973

Invoice

Date	Invoice #
3/31/2005	2377

Bill To
Gortech Global Fabrication Attn: Luke Sicard 2592 Oklahoma Salem Road P.O. Box 687 DuBois, PA 15801

P.O. No.	Terms	Project
10293	Due on receipt	105-1723

Quantity	Description	Rate	Amount
	Deposit for Ammonia Refrigeration System per RSE quote dated March 11, 2005. - Base Bid Amount \$ 2,350,000.00 - Deduct for combining Bin Dump/ Batch Cook Room & Cheese Blend/Cheese Grind units \$59,980.00 <hr/> Total Contract Amount \$2,290,020.00 Deposit Amount (20% of Contract) \$458,004.00 <hr/> Balance of Contract \$1,832,016.00 Total Amount Due this Invoice \$458,004.00	458,004.00	458,004.00
		Total	\$458,004.00

RSE Inc.

Refrigeration Service and Engineering, Inc.
75 Industrial Parkway, Suite B
Pottstown, PA 19464
Phone (610)495-1972 -- Fax (610)495-1973

Invoice

Date	Invoice #
6/27/2005	2531

Bill To

Gortech Global Fabrication
Attn: Luke Sicard
2592 Oklahoma Salem Road
P.O. Box 687
DuBois, PA 15801

P.O. No.	Terms	Project
10293	Due on receipt	I05-1723

Quantity	Description	Rate	Amount
	Progress Invoice for Equipment Shipments: - Alfa Laval Heat Exchangers (Qty 2 of 3) \$51,250.00 - Cooling Tower Water Pump \$3,975.00 Total Invoice Amount \$55,225.00	55,225.00	55,225.00
		Total	\$55,225.00

RSE Inc.

Refrigeration Service and Engineering, Inc.
75 Industrial Parkway, Suite B
Pottstown, PA 19464
Phone (610)495-1972 ~ Fax (610)495-1973

Invoice

Date	Invoice #
7/29/2005	2539

Bill To
Gortech Global Fabrication Attn: Luke Sicard 2592 Oklahoma Salem Road P.O. Box 687 DuBois, PA 15801

P.O. No.	Terms	Project
10293	Due on receipt	105-1723

Quantity	Description	Rate	Amount
	Progress Invoice for Equipment Shipments: - 3rd Alfa Laval Heat Exchanger = \$28,440.00 - Compressors = \$150,600.00 - Cooling Tower = \$69,000.00 - Evaporative Condenser = \$64,200.00 - Evaporators = \$27,600.00 Total Invoice Amount = \$339,840.00	339,840.00	339,840.00
		Total	\$339,840.00

RSE Inc.

Refrigeration Service and Engineering, Inc.
 75 Industrial Parkway, Suite E
 Pottstown, PA 19464
 Phone (610)495-1972 -- Fax (610)495-1973

Invoice

Date	Invoice #
8/30/2005	2620

Bill To
Gortech Global Fabrication Attn: Luke Sicard 2592 Oklahoma Salem Road P.O. Box 687 DuBois, PA 15801

P.O. No.	Terms	Project
10293	Net 30	105-1723

Quantity	Description	Rate	Amount
	<p>Progress Invoice for Ammonia Refrigeration System per RSE Quote dated March 11, 2005 and Gortech PO# 10293.</p> <p>Contract Amount: \$2,290,020.00 Less Billed: 853,069.00</p> <hr/> <p>Total: \$1,436,951.00</p> <p>This Invoice for the following Equipment:</p> <p>Vessels: \$ 45,000.00 Make-up Air Units: 601,700.00 Structural Steel Evaluation: 9,600.00</p> <hr/> <p>Total: \$656,300.00</p> <p>Total Amount Due This Invoice</p>	656,300.00	656,300.00
Total			\$656,300.00

Refrigeration Service and Engineering, Inc
Transaction Detail By Account
January 1, 2004 through April 11, 2006

2:09 PM

04/11/06

Accrual Basis

Type	Date	Num	Name	Memo	Class	Cir	Split	Amount	Balance
Sales									
Construction									
Invoice	3/31/2005	2377	Giuseppe's Finer F...	Deposit for A...			Accounts Rec...	456,004.00	456,004.00 - Pd
Invoice	6/27/2005	2531	Giuseppe's Finer F...	Progress Inv...			Accounts Rec...	55,225.00	513,229.00 - Pd
Invoice	7/29/2005	2539	Giuseppe's Finer F...	Progress Inv...			Accounts Rec...	339,840.00	853,069.00 - Pd
Invoice	8/30/2005	2620	Giuseppe's Finer F...	Total Amount...			Accounts Rec...	656,300.00	1,509,369.00 - Pd
Invoice	9/26/2005	2680	Giuseppe's Finer F...	Total Amount...			Accounts Rec...	250,395.00	1,759,764.00 - Pd
Invoice	10/13/2005	2734	Giuseppe's Finer F...	Progress Inv...			Accounts Rec...	222,550.00	1,982,314.00
Invoice	11/18/2005	2793	Giuseppe's Finer F...	Total Amount...			Accounts Rec...	194,900.00	2,177,214.00
Invoice	2/3/2006	3039	Giuseppe's Finer F...	Total Amount...			Accounts Rec...	50,000.00	2,227,214.00
								<u>2,227,214.00</u>	<u>2,227,214.00</u>
Total Construction								<u>2,227,214.00</u>	
Total Sales								<u>2,227,214.00</u>	
TOTAL								<u>2,227,214.00</u>	

75k pd

ICP ASSET MANAGEMENT, INC.

2592 OKLAHOMA SALEM ROAD
P.O. BOX 527A
DUBOIS, PA 15801

1186

DATE 09/29/05

60-882/43

First Commonwealth
First Commonwealth Bank
Central Office: Indiana, PA 15701-9400
Downtown Dubois Office

PAY SIX HUNDRED FIFTY-SIX THOUSAND THREE HUNDRED AND 00/100-----DOLLARS \$ 656,300.00
TO THE ORDER
OF

RSE INC
REFRIGERATION SERVICE AND ENGINEERING INC
75 INDUSTRIAL PARKWAY, SUITE B
POTTSTOWN PA 19464

INV #2620



⑈001186⑈ ⑆043306826⑆ 7110 120436⑈

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
						323
		ICP ASSET MANAGEMENT, INC. P.O. BOX 527A 2592 OKLAHOMA SALEM ROAD DUBOIS, PA 15801	FIRST COMMONWEALTH BANK DUBOIS OFFICE DUBOIS, PA 60-882-493	1/24/2006		
		PAY TO THE ORDER OF REFRIGERATION SERVICE & ENGINEERING, INC.		\$ **75,000.00		
		Seventy Five Thousand and 00/100-----DOLLARS				
		REFRIGERATION SERVICE & ENGINEERING, INC. 75 INDUSTRIAL PARKWAY, SUITE B POTTSTOWN, PA 19464				
		MEMO				



⑈000323⑈ ⑆043306826⑆ 7110 120475⑈

ICP ASSET MANAGEMENT, INC.

2592 OKLAHOMA SALEM ROAD

P.O. BOX 527A

DUBOIS, PA 15801

1043

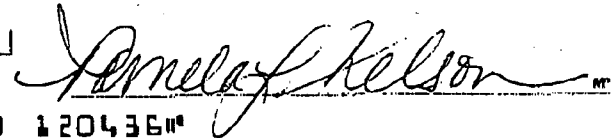
DATE 04/18/05

60-682/433

PAY FOUR HUNDRED FIFTY-EIGHT THOUSAND AND FOUR AND 00/100---DOLLARS \$ 458,004.00
TO THE ORDER OF

REFRIGERATION SERVICE AND ENGINEERING INC
75 INDUSTRIAL PARKWAY, SUITE B
POTTSTOWN PA 19464

INV #2377



"001043" :043306826: 7110 120436"

First Commonwealth
First Commonwealth Bank
Central Office Building, PA 17931-0100
Dunsmuir Building Office

ICP ASSET MANAGEMENT, INC.

2592 OKLAHOMA SALEM ROAD

P.O. BOX 527A

DUBOIS, PA 15801

1143

DATE 08/08/05

60-682/433

PAY FIFTY-FIVE THOUSAND TWO HUNDRED TWENTY-FIVE AND 00/100---DOLLARS \$ 55,225.00
TO THE ORDER OF

RSE INC

INV #2531

75 INDUSTRIAL PARKWAY SUITE B

First Commonwealth
First Commonwealth Bank
Central Office Building, PA 17931-0100
Dunsmuir Building Office

ICP ASSET MANAGEMENT, INC.

2592 OKLAHOMA SALEM ROAD

P.O. BOX 527A

DUBOIS, PA 15801

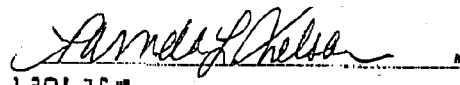
1169

DATE 09/06/05

60-682/433

PAY THREE HUNDRED THIRTY-NINE THOUSAND EIGHT HUNDRED FORTY AND 00/100-----DOLLARS \$ 339,840.00
TO THE ORDER OF

REFRIGERATION SERVICE & ENGINEERING INC INV #2539
75 INDUSTRIAL PARKWAY SUITE B
POTTSTOWN PA 19464



"001169" :043306826: 7110 120436"

First Commonwealth
First Commonwealth Bank
Central Office Building, PA 17931-0100
Dunsmuir Building Office

FILED

APR 27 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 1 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS, INC. al

SHERIFF RETURN

NOW, May 19, 2006 AT 11:15 AM SERVED THE WITHIN MECHANIC'S LIEN CLAIM ON GORTECH GLOBAL FABRICATION, INC. DEFENDANT AT 2592 OKLAHOMA SALEM ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO KENNETH ITCHELL, C.F.O. A TRUE AND ATTESTED COPY OF THE ORIGINAL MECHANIC'S LIEN CLAIM AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

FILED
01:4234
MAY 23 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 2 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS, INC. al

SHERIFF RETURN

NOW, May 19, 2006 AT 11:15 AM SERVED THE WITHIN MECHANIC'S LIEN CLAIM ON ICP GLOBAL HOLDINGS INC. DEFENDANT AT 2592 OKLAHOMA SALEM ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO KENNETH MITCHELL, C.F.O. A TRUE AND ATTESTED COPY OF THE ORIGINAL MECHANIC'S LIEN CLAIM AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 3 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS, INC. al

SHERIFF RETURN

NOW, May 19, 2006 AT 11:15 AM SERVED THE WITHIN MECHANIC'S LIEN CLAIM ON ICP ASSET MANAGEMENT, INC. DEFENDANT AT 2592 OKLAHOMA SALEM ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO KENNETH MITCHELL, C.F.O. A TRUE AND ATTESTED COPY OF THE ORIGINAL MECHANIC'S LIEN CLAIM AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 4 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS, INC. al

SHERIFF RETURN

NOW, May 19, 2006 AT 11:15 AM SERVED THE WITHIN MECHANIC'S LIEN CLAIM ON GIUSEPPE'S FINER FOODS, INC. DEFENDANT AT 2592 OKLAHOMA SALEM ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO KENNETH MITCHELL, C.F.O. A TRUE AND ATTESTED COPY OF THE ORIGINAL MECHANIC'S LIEN CLAIM AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICES 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS, INC. et al

SHERIFF RETURN


RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	OBERMAYER	126318	40.00
SHERIFF HAWKINS	OBERMAYER	126318	53.30

Sworn to Before Me This

_____ Day of _____ 2006

So Answers,


Chester A. Hawkins
Sheriff

FILED

MAY 23 2006

William A. Shaw
Prothonotary/Clerk of Courts

OBERMAYER REBMANN MAXWELL & HIPPEL, LLP

By: Gary M. Samms, Esquire
Marc I. Simon, Esquire
Pennsylvania I.D. No.: 58096/ 201798
1617 John F. Kennedy Boulevard
One Penn Center, 18th Floor
Philadelphia, PA 19103-1895
(215) 665-3000

Attorney for Claimant,
Refrigeration Service & Engineering, Inc.

Refrigeration Service & Engineering, Inc.
75 Industrial Parkway
Pottstown, PA 19464

Claimant,

v.

Giuseppe's Finer Foods, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

Gortech Global Fabrication, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Asset Management, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

COURT OF COMMON PLEAS OF

CLEARFIELD COUNTY

APRIL TERM, 2006

NO. 06651CD

FILED *no cc*
m/12:39
JUN 05 2006
William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF PHILADELPHIA :

I, Marc I. Simon, Esquire, being duly sworn, depose and say on this 2nd day of June, 2006

by this affidavit that:

1. I am more than eighteen (18) years of age;
2. I am counsel for claimant, Refrigeration Service & Engineering, Inc.
3. On May 19, 2006, at 11:15 AM, I caused a Claim for Mechanics' Lien to be served by hand delivery upon respondent Gortech Global Fabrication, Inc., by Clearfield County Sheriffs Coudriet and DeHaven. Furthermore, pursuant to their procedure, the Clearfield County Sheriff has filed a notarized copy of the Sheriff's Return of Service with the Clearfield County Prothonotary. A copy of the Sheriff's Return of Service is attached hereto as Exhibit "A".

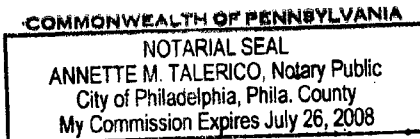


MARC I. SIMON

Sworn to and subscribed
before me this 20th day
of June, 2006


Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

I, Marc I. Simon, Esquire, counsel for claimant, Refrigeration Service & Engineering, Inc., certify that on June 2, 2006, a copy of the attached Affidavit was served *via* first class mail upon the following:

Giuseppe's Finer Foods, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

AND

Gortech Global Fabrication, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

AND

ICP Asset Management, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801


MARC I. SIMON

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 1 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS, INC. al

SHERIFF RETURN

NOW, May 19, 2006 AT 11:15 AM SERVED THE WITHIN MECHANIC'S LIEN CLAIM ON GORTECH GLOBAL FABRICATION, INC. DEFENDANT AT 2592 OKLAHOMA SALEM ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO KENNETH ITCHELL, C.F.O. A TRUE AND ATTESTED COPY OF THE ORIGINAL MECHANIC'S LIEN CLAIM AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

FILED
01:42 PM
MAY 23 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 2 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS, INC. a1

SHERIFF RETURN

NOW, May 19, 2006 AT 11:15 AM SERVED THE WITHIN MECHANIC'S LIEN CLAIM ON ICP GLOBAL HOLDINGS INC. DEFENDANT AT 2592 OKLAHOMA SALEM ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO KENNETH MITCHELL, C.F.O. A TRUE AND ATTESTED COPY OF THE ORIGINAL MECHANIC'S LIEN CLAIM AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 3 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS, INC. a

SHERIFF RETURN

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SERVED BY: COUDRIET / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 4 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.
vs.
DEFENDANT: GIUSEPPE'S FINER FOODS, INC. et al

SHERIFF RETURN

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SERVED BY: COUDRIET / DEHAVEN

OBERMAYER REBMANN MAXWELL & HIPPEL, LLP

By: Gary M. Samms, Esquire
Marc I. Simon, Esquire
Pennsylvania I.D. No.: 58096/ 201798
1617 John F. Kennedy Boulevard
One Penn Center, 18th Floor
Philadelphia, PA 19103-1895
(215) 665-3000

Attorney for Claimant,
Refrigeration Service & Engineering, Inc.

Refrigeration Service & Engineering, Inc.
75 Industrial Parkway
Pottstown, PA 19464

Claimant,

v.

Giuseppe's Finer Foods, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

Gortech Global Fabrication, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Asset Management, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

COURT OF COMMON PLEAS OF

CLEARFIELD COUNTY

APRIL TERM, 2006

NO. 06651CD

FILED ¹¹⁶cc
M12:39/24
JUN 05 2006

William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA :

SS.

COUNTY OF PHILADELPHIA :

I, Marc I. Simon, Esquire, being duly sworn, depose and say on this 2nd day of June, 2006

by this affidavit that:

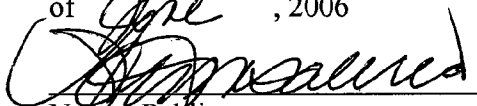
1. I am more than eighteen (18) years of age;

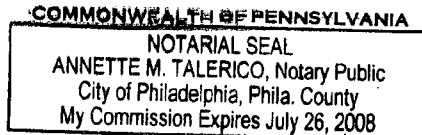
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MARC I. SIMON

Sworn to and subscribed
before me this 2nd day
of June, 2006


Notary Public
My Commission Expires:



CERTIFICATE OF SERVICE

I, Marc I. Simon, Esquire, counsel for claimant, Refrigeration Service & Engineering, Inc., certify that on June 2, 2006, a copy of the attached Affidavit was served *via* first class mail upon the following:

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2592 Oklahoma Salem Road
DuBois, PA 15801

AND

Gortech Global Fabrication, Inc.
2592 Oklahoma Salem Road
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AND

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2592 Oklahoma Salem Road
DuBois, PA 15801

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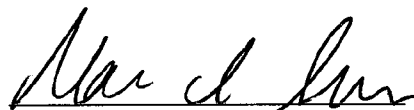

MARC I. SIMON

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 1 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.
vs.
DEFENDANT: GIUSEPPE'S FINER FOODS, INC. a/

SHERIFF RETURN

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SERVED BY: COUDRIET / DEHAVEN

FILED
6/1:4231
MAY 23 2006

William A. Shew
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 2 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS, INC. a/k/a

SHERIFF RETURN

NOW, May 19, 2006 AT 11:15 AM SERVED THE WITHIN MECHANIC'S LIEN CLAIM ON ICP GLOBAL HOLDINGS INC. DEFENDANT AT 2592 OKLAHOMA SALEM ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO KENNETH MITCHELL, C.F.O. A TRUE AND ATTESTED COPY OF THE ORIGINAL MECHANIC'S LIEN CLAIM AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 3 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS, INC. et al

SHERIFF RETURN

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SERVED BY: COUDRIET / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 4 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS, INC. et al

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SERVED BY: COUDRIET / DEHAVEN

FILED

JUN 05 2006

William A. Shaw
Prothonotary/Clerk of Courts

OBERMAYER REBMANN MAXWELL & HIPPEL, LLP

By: Gary M. Samms, Esquire
Marc I. Simon, Esquire
Pennsylvania I.D. No.: 58096/ 201798
1617 John F. Kennedy Boulevard
One Penn Center, 18th Floor
Philadelphia, PA 19103-1895
(215) 665-3000

Attorney for Claimant,
Refrigeration Service & Engineering, Inc.

Refrigeration Service & Engineering, Inc.
75 Industrial Parkway
Pottstown, PA 19464

Claimant,

v.

Giuseppe's Finer Foods, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

Gortech Global Fabrication, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Asset Management, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

COURT OF COMMON PLEAS OF

CLEARFIELD COUNTY

APRIL TERM, 2006

NO. 06651CD

FILED *NCC*
07/12/30/06
JUN 05 2006
William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA :

:

SS.

COUNTY OF PHILADELPHIA :

:


I, Marc I. Simon, Esquire, being duly sworn, depose and say on this 2nd day of June, 2006

by this affidavit that:

1. I am more than eighteen (18) years of age;

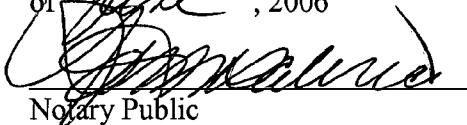
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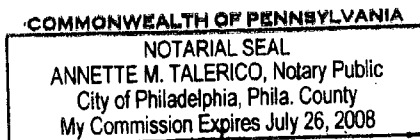
MARC I. SIMON

Sworn to and subscribed
before me this 20th day
of April, 2006



Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

I, Marc I. Simon, Esquire, counsel for claimant, Refrigeration Service & Engineering, Inc., certify that on June 2, 2006, a copy of the attached Affidavit was served *via* first class mail upon the following:

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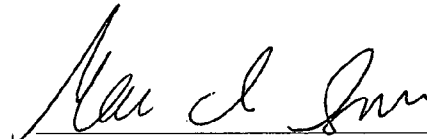

MARC I. SIMON

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 1 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS, INC. al

SHERIFF RETURN

NOW, May 19, 2006 AT 11:15 AM SERVED THE WITHIN MECHANIC'S LIEN CLAIM ON GORTECH GLOBAL FABRICATION, INC. DEFENDANT AT 2592 OKLAHOMA SALEM ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO KENNETH ITCHELL, C.F.O. A TRUE AND ATTESTED COPY OF THE ORIGINAL MECHANIC'S LIEN CLAIM AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

FILED
01:4234
MAY 23 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 2 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS, INC. a/

SHERIFF RETURN

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SERVED BY: COUDRIET / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 3 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS, INC. et

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SERVICE # 4 OF 4
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SERVED BY: COUDRIET / DEHAVEN

FILED

JUN 05 2006

**William A. Shaw
Prothonotary/Clerk of Courts**

OBERMAYER REBMANN MAXWELL & HIPPEL, LLP

By: Gary M. Samms, Esquire
Marc I. Simon, Esquire
Pennsylvania I.D. No.: 58096/ 201798
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Attorney for Claimant,
Refrigeration Service & Engineering, Inc.

Refrigeration Service & Engineering, Inc.
75 Industrial Parkway
Pottstown, PA 19464

Claimant,

v.

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Respondent

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DuBois, PA 15801

Respondent

AND

ICP Asset Management, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

COURT OF COMMON PLEAS OF

CLEARFIELD COUNTY

APRIL TERM, 2006

NO. 06651CD

FILED *no cc*
m12:39/01
JUN 05 2006 *(S)*

William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA :

SS.

COUNTY OF PHILADELPHIA :

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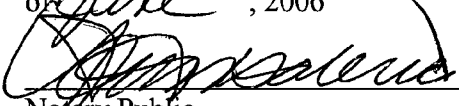
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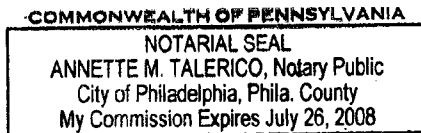
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before me this 2nd day
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Notary Public
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MARC I. SIMON

EXHIBIT A

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SERVED BY: COUDRIET / DEHAVEN

FILED
01:423 PM
MAY 23 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 2 OF 4
MECHANIC'S LIEN CLAIM

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vs.

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 3 OF 4
MECHANIC'S LIEN CLAIM

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.
vs.
DEFENDANT: GIUSEPPE'S FINER FOODS, INC. et al

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SERVED BY: COUDRIET / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101540
NO: 06-651-CD
SERVICE # 4 OF 4
MECHANIC'S LIEN CLAIM

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SERVED BY: COUDRIET / DEHAVEN

FILED

JUN 05 2006

William A. Shaw
Prothonotary/Clerk of Courts

CA

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

REFRIGERATION SERVICE
ENGINEERING, INC.

Claimant

VS.

GIUSEPPE'S FINER FOODS,
INC., GORTECH GLOBAL
FABRICATION, INC., ICP
ASSET MANAGEMENT, INC.,
and ICP GLOBAL HOLDINGS,
INC.

Respondents

NO. 06-651-CD

TYPE OF CASE: CIVIL

TYPE OF PLEADING: PRELIMINARY
OBJECTIONS

FILED ON BEHALF OF: RESPONDENT

COUNSEL OF RECORD:

GREGORY H. TEUFEL, ESQ.
SARAH B. HEINEMAN, ESQ.
SCHNADER HARRISON SEGAL &
LEWIS LLP
FIFTH AVENUE PLACE, SUITE 2700
120 FIFTH AVENUE
PITTSBURGH, PA 15222
(412) 577.5200

CHRISTOPHER E. MOHNEY, ESQ.
25 EAST PARK AVENUE, SUITE 6
DUBOIS, PA 15801
(814) 375.1044

FILED 300
01/133/301 Atty Mohnay
JUN 27 2006 (CR)

William A. Shaw
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REFRIGERATION SERVICE &)	
ENGINEERING, INC.)	
Claimant,)	
)	
v.)	Case No. 06-651-CD
)	
GIUSEPPE'S FINER FOODS, INC.,)	
GORTECH GLOBAL FABRICATION, INC,)	
ICP ASSET MANAGEMENT INC., and)	
ICP GLOBAL HOLDINGS, INC.)	
Respondents.)	

RESPONDENTS' PRELIMINARY OBJECTIONS

Giuseppe's Finer Foods, Inc., Gortech Global Fabrication, Inc., ICP Asset Management, Inc., and ICP Global Holdings Inc. (hereinafter collectively referred to as "Respondents") through its undersigned counsel, hereby files its brief in support of its Preliminary Objections pursuant to 49 P.S. § 1505 (2005) of Claimant's Mechanics' Lien Claim:

1. Claimant, Refrigeration Service & Engineering, Inc filed a mechanic's claim against Giuseppe's Finer Foods, Inc., Gortech Global Fabrication, Inc., ICP Asset Management, Inc., and ICP Global Holdings Inc. (hereinafter collectively referred to as "Respondents") for the payment of a debt for the labor and materials provided by Claimant.

2. Claimant avers that ICP Global Holdings Inc. is the owner of the property that is the subject of this claim.

3. Any party may preliminarily object to a claim upon a showing of exemption or immunity of the property from lien, or for lack of conformity with this act. 49 P.S. § 1505. The Mechanics' Lien Law is a creature of statute in derogation of the common law and must be given strict construction. *King's Oak Liquidators v. Bala Cynwyd Hotel Associates*, 405 Pa. Super. 250, 592 A.2d 102 (1991).

4. This Mechanic's Lien Claim is invalid since Claimant failed to serve Respondents with proper notice.

5. Claimant, as a subcontractor, failed to serve Defendant with notice as required by the Mechanic's Lien Act of 1963 ("Act.")

6. Therefore, it is invalid and must be stricken.

7. Claimant is a subcontractor as defined under the Act

8. Contrary to Plaintiff's averments in its claim, it is a subcontractor as defined under the Act and not a contractor.

9. 49 P.S. § 1201 provides the definitions of contractor and subcontractor in per part:

The following words, terms and phrases when used in this act shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(4) "CONTRACTOR" means one who, **by contract with the owner**, express or implied, erects, constructs, alters or repairs an improvement or any part thereof or furnishes labor, skill or superintendence thereto; or supplies or hauls materials, fixtures, machinery or equipment reasonably necessary for and actually used therein; or any or all of the foregoing, whether as superintendent, builder or materialman. The term also includes an architect or engineer who, by contract with the owner, express or implied, in addition to the preparation of drawings, specifications and contract documents also superintends or supervises any such erection, construction, alteration or repair.

(5) "SUBCONTRACTOR" means one who, by contract with the contractor, express or implied, erects, constructs, alters or repairs an improvement or any part thereof; or furnishes labor, skill or superintendence thereto; or supplies or hauls materials, fixtures, machinery or equipment reasonably necessary for and actually used therein; or any or all of the foregoing, whether as superintendent, builder or materialman. The term does not include an architect or engineer who contracts with a contractor or subcontractor, or a person who contracts with a subcontractor or with a materialman.

49 P.S. § 1201(2005)(emphasis added).

10. Claimant contends that it is a contractor; however, all of its contracts that form the basis for this lien are with Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, Inc.

11. Claimant does not have any contracts with the owner; which is a requirement for a claimant to be labeled a contractor under the Act.

12. Moreover, Claimant does not even allege that it contracted with the owner ICP Global Holdings, Inc.

13. Therefore, for purposes under the Act, Claimant must follow the procedures outlined for a subcontractor.

14. Claimant failed to give requisite 30 day notice, thereby rendering this Claim invalid.

15. 49 P.S. § 1501 outlines the notice requirement subcontractors are mandated to provide to the owner. 1501 provides in pertinent:

(b) Formal notice in all cases by subcontractor. No claim by a subcontractor, whether for erection or construction or for alterations or repairs, shall be valid unless, at least thirty (30) days before the same is filed, he shall have given to the owner a formal written notice of his intention to file a claim, except that such notice shall not be required where the claim is filed pursuant to a rule to do so as provided by section 506.

49 P.S. § 1501(b).

16. Claimant never gave the owner the requisite formal written notice of its intent to file this claim. This is evident by the fact that Claimant does not state in its claim the date of such notice to owner.¹

¹ 49 P.S. 1503(4) requires a subcontractor to state in the claim the date of the requisite notice it served upon owner.

17. In order to effectuate a valid lien claim, the contractor or subcontractor must be in strict compliance with the requirements of the Mechanics' Lien Law. *Castle Pre-Cast Superior Walls of Delaware, Inc. v. Strauss-Hammer*, 416 Pa. Super. 53, 610 A.2d 503 (1992).

18. Accordingly, the Claim is invalid per the requirements of 49 P.S. 1501(b) and the case law.

19. Therefore, this claim must be stricken.

20. Claimant surreptitiously tries to circumvent this notice requirement by averring that it is a contractor and the entities it contracted with are merely alter egos of the owner entity ICP².

21. However, claimant does not plead any of the requisite facts to support this conclusory averment that these entities are alter egos of each other.

22. The alter ego theory is applicable where the individual or corporate owner controls the corporation to be pierced and the controlling owner is to be held liable." *Miners, Inc. v. Alpine Equipment Corp.*, 722 A.2d 691, 695 (Pa. Super. 1998)

23. There is a strong presumption in Pennsylvania against piercing the corporate veil. *Wedner v. Unemployment Board*, 449 Pa. 460, 464, 296 A.2d 792, 794 (1972)

24. "Any court must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception. . . . Care should be taken on all occasions to avoid making the entire theory of corporate entity * * * useless." *Id.*

25. The factors to be considered in disregarding the corporate form as follows: undercapitalization, failure to adhere to corporate formalities, substantial intermingling of

² Claimant also alleges that the entities are agents of each other, but offer no facts to support this legal conclusion.

corporate and personal affairs and use of the corporate form to perpetrate fraud. *Lumax Indus. v. Aultman*, 543 Pa. 38, 41-42 (Pa. 1995).

26. Claimant has similarly failed to plead any facts to support its conclusory allegations that the entities are "alter egos" of the owner entity.

27. The only factual averment claimant proffers to support this alter ego averment is the entities have similar incorporators, directors, and officers. This fact does not support any of the factors outlined in *Lumax*.

28. Moreover, there is a strong legal presumption not pierce the corporate veil.

29. Claimant has not alleged any facts to overcome this presumption.

30. Accordingly, these entities are not alter egos of each other.

31. Simply, as set forth above, Claimant is a subcontractor as defined under the Act. Claimant failed to adhere to the notice requirements mandated under the Act.

32. Therefore, this claim is invalid and must be stricken.

33. In the alternative, Claimant's averments that entities in the claim are alter egos and/or agents of each other must be stricken.

34. If this Honorable court does not strike this claim for noncompliance with the Act, the averments of that the entities in the claim are alter egos and/or agents of each must be stricken.

35. As set forth above, Claimant's averments that the entities in the claim are alter egos of one other is not factually supported.

36. The case law requires that in order to sustain such an allegation, it must be supported by facts that fall into one of the enumerated factors. *Lumax supra*.

37. Without the required factual support of the alter ego allegation, as a matter of law these allegations must be stricken.

38. Similarly, Claimant fails to allege any facts to support that the entities are "agents of one another."

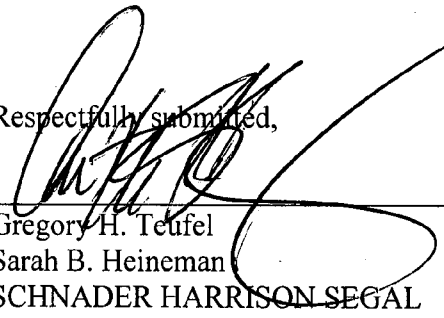
39. Again, Claimant cannot sustain these legal conclusions without factual support. Pa. R.C.P. No. 1019(a) states that "the material facts on which a cause of action or defense is based shall be stated in a concise and summary form."

40. In the present case, claimant does not plead any facts to support the legal conclusion that the entities are agents of each other.

41. Therefore, these averments must be stricken from the claim.

Wherefore, the Respondents respectfully requests that the Court strike Claimant's Mechanics' Lien Claim for noncompliance with the Mechanics' Lien Act of 1963. In the alternative, Respondents request that the Court strike Claimants ¶¶ 8,9,10 in Claimant's Mechanics' Lien Claim.

Respectfully submitted,



Gregory H. Teufel
Sarah B. Heineman
SCHNADER HARRISON SEGAL
& LEWIS LLP
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120 Fifth Avenue
Pittsburgh, PA 15222
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Christopher E. Mohny, Esquire
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(814) 375.1044

Attorneys for Respondents

FILED
JUN 27 2006

William A. Shaw
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REFRIGERATION SERVICE &
ENGINEERING, INC.
Claimant,

v.

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION, INC.,
ICP ASSET MANAGEMENT INC., and
ICP GLOBAL HOLDINGS, INC.
Respondents.

Case No. 06-651-CD

ORDER

It is on this _____ day of _____ 2006, ORDERED that Respondents

Giuseppe's Finer Foods, Inc., Gortech Global Fabrication, Inc., ICP Asset Management, Inc.,
and ICP Global Holdings Inc.'s Preliminary Objections to Claimant's Mechanical Lien Claim
are GRANTED and Claimant's Mechanical Lien Claim is STRICKEN.

In the alternative, Claimants ¶¶ 8,9,10 in Claimant's Mechanics' Lien Claim are Stricken
from the Claim.

J.

1A

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

REFRIGERATION SERVICE
ENGINEERING, INC.

Claimant,

vs.

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
INC., ICP ASSET MANAGEMENT,
INC. and ICP GLOBAL HOLDINGS,
INC.

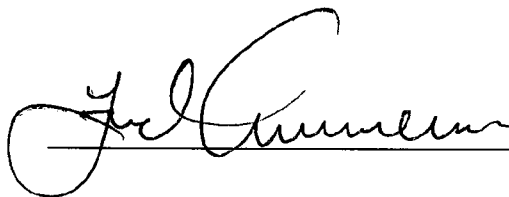
Respondents

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:
NO. 06-651-C.D.
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:
:
:

ORDER

AND NOW, this 30 day of June, 2006, upon consideration of Respondents' Preliminary Objections, it is hereby ORDERED that a hearing is scheduled for the 23rd day of August, 2006 at 3 o'clock P.M. in Courtroom # 1 of the Court of Common Pleas of Clearfield County, Pennsylvania.

BY THE COURT:



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013:32/4
JUL 03 2006
William A. Shaw
Prothonotary/Clerk of Courts
Atty. Moneys

DATE: 7/3/06

X You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

William A. Shaw
Prothonotary/Clerk of Courts

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FILED

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

REFRIGERATION SERVICE
ENGINEERING, INC.

Claimant,

vs.

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
INC., ICP ASSET MANAGEMENT,
INC. and ICP GLOBAL HOLDINGS,
INC.

Respondents.

: NO. 06-651-C.D.

:
: Type of Pleading:
: CERTIFICATE OF SERVICE

:
: Filed on Behalf of:
: GIUSEPPE'S FINER FOODS, INC.

:
: Counsel of Record:
: CHRISTOPHER E. MOHNEY, ESQUIRE

:
: Supreme Court No.: 63494

:
: 25 EAST PARK AVENUE
: SUITE 6
: DUBOIS, PA 15301
: (814) 375-1044

FILED ^{NO CC}
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JUL 05 2006 ^{lm}

William A. Shaw
Prothonotary/Clerk of Courts

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

REFRIGERATION SERVICE
ENGINEERING, INC.

Claimant,

vs.

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
INC., ICP ASSET MANAGEMENT,
INC. and ICP GLOBAL HOLDINGS,
INC.

Respondents.

NO. 06-651-C.D.

CERTIFICATE OF SERVICE

I, CHRISTOPHER E. MOHNEY, ESQUIRE, co-counsel of record for Respondents, do hereby certify that on the 27th day of June, 2006, I did cause to be served certified true and correct copies of Preliminary Objections and Brief on the following individuals, by first class United States mail, postage pre-paid:

Gary M. Samms, Esquire
Obermayer, Rebmann, Maxwell & Hippel, LP
1617 John F. Kennedy Boulevard
One Penn Center, 18th Floor
Philadelphia, PA 19103

BY:


Christopher E. Mohny, Esquire

FILED

JUL 05 2006

William A. Shaw
Prothonotary/Clerk of Courts

RECEIVED JUL 10 2006 10 10 AM

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

REFRIGERATION SERVICE
ENGINEERING, INC.

Claimant,

vs.

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
INC., ICP ASSET MANAGEMENT,
INC. and ICP GLOBAL HOLDINGS,
INC.

Respondents.

: NO. 06-551-C.D.
:
: Type of Pleading:
: CERTIFICATE OF SERVICE
:
: Filed on Behalf of:
: GIUSEPPE'S FINER FOODS, INC.
:
: Counsel of Record:
: CHRISTOPHER E. MOHNEY, ESQUIRE
:
: Supreme Court No.: 63494
:
: 25 EAST PARK AVENUE
: SUITE 6
: DUBOIS, PA 15801
: (814) 375-1044

FILED

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JUL 11 2006

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William A. Shaw
Prothonotary/Clerk of Courts

(GK)

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

REFRIGERATION SERVICE
ENGINEERING, INC.

Claimant,

vs.

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION,
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INC. and ICP GLOBAL HOLDINGS,
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Respondents.

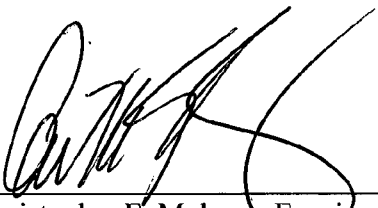
NO. 06-651-C.D.

CERTIFICATE OF SERVICE

I, CHRISTOPHER E. MOHNEY, ESQUIRE, do hereby certify that on the 10th day of July, 2006, I served by First Class United States Mail, postage pre-paid, certified copy of Order of Court dated June 30, 2006, on the following individual:

Gary M. Samms, Esquire
Obermayer, Rebmann, Maxwell & Hippel, LP
1617 John F. Kennedy Boulevard
One Penn Center, 18th Floor
Philadelphia, PA 19103

By:



Christopher E. Mohney, Esquire

FILED

JUL 11 2006

**William A. Shaw
Prothonotary/Clerk of Courts**

24

**COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL ACTION-(LAW)**

Refrigeration Service & Engineering, Inc.
75 Industrial Parkway
Pottstown, PA 19464

Claimant

v.

Giuseppe's Finer Foods, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

Gortech Global Fabrication, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Asset Management, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

NO. 06-651-CD

Type of Case: Mechanics' Lien

Type of Pleading: Response to Preliminary
Objections to Claim for Mechanics' Lien
and Accompanying Memorandum of Law

Filed on Behalf of: Refrigeration Service and
Engineering Inc

Counsel of Record for this Party: Gary M. Samms

Supreme Court No: 58096

OBERMAYER REBMANN MAXWELL & HIPPEL, LP
1617 John F. Kennedy Boulevard
One Penn Center, 18th Floor
Philadelphia, PA 19103
(215) 665-3109

Dated: August 16, 2006

FILED No CC
mlo: 5240
AUG 17 2006 GK

William A. Shaw
Prothonotary/Clerk of Courts

Refrigeration Service & Engineering, Inc.
75 Industrial Parkway
Pottstown, PA 19464

Claimant,

v.

Giuseppe's Finer Foods, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

Gortech Global Fabrication, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Asset Management, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY

APRIL TERM, 2006

NO. 06-651-CD

ORDER

AND NOW, this _____ day of _____, 2006, upon consideration of the preliminary objections of Respondents, Giuseppe's Finer Foods, Inc., Gortech Global Fabrication, Inc., ICP Asset Management, Inc., and ICP Global Holdings, Inc., to the Mechanics' Lien Claim of Refrigeration Service and Engineering, Inc., and Refrigeration Service and Engineering, Inc.'s response thereto, it is hereby **ORDERED** that Respondents' preliminary objections are **OVERRULED**. It is further **ORDERED**

that Respondents **SHALL ANSWER** Claimant's Mechanics' Lien within twenty days of the date of this Order.

BY THE COURT:

J

Refrigeration Service & Engineering, Inc.
75 Industrial Parkway
Pottstown, PA 19464

Claimant,

v.

Giuseppe's Finer Foods, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

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AND

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Respondent

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY

APRIL TERM, 2006

NO. 06-651-CD

ALTERNATIVE ORDER

AND NOW, this ____ day of _____, 2006, upon consideration of Claimant's Request for Leave of Court to conduct discovery with respect to Respondents' Preliminary Objections to Claimant's Mechanics' Lien Claim, it is **ORDERED** that Claimant may conduct discovery including, inter alia, the serving of interrogatories, requests for production of documents and requests for admission, the subpoenaing of non-parties and non-party documents and the taking of depositions on the disputed issues

of fact raised by Respondents' Preliminary Objections by _____, 2006. It is further
ORDERED that Claimant may file with the Court supplemental memoranda regarding
this discovery by the same date.

BY THE COURT:

J.

OBERMAYER REBMANN MAXWELL & HIPPEL, LLP

By: Gary M. Samms, Esquire

Marc. I Simon, Esquire

Pennsylvania I.D. Nos.: 58096/201798

1617 John F. Kennedy Boulevard

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Attorneys for Claimant,

Refrigeration Service & Engineering, Inc.

Refrigeration Service & Engineering, Inc.

75 Industrial Parkway

Pottstown, PA 19464

Claimant,

v.

Giuseppe's Finer Foods, Inc.

2592 Oklahoma Salem Road

DuBois, PA 15801

Respondent

AND

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DuBois, PA 15801

Respondent

AND

ICP Global Holdings Inc.

2592 Oklahoma Salem Road

DuBois, PA 15801

Respondent

COURT OF COMMON PLEAS OF

CLEARFIELD COUNTY

APRIL TERM, 2006

NO. 06-651-CD

**REFRIGERATION SERVICE AND ENGINEERING INC.'S RESPONSE TO
RESPONDENTS' PRELIMINARY OBJECTIONS**

Claimant Refrigeration Service & Engineering, Inc. ("RSE") by its attorneys, OBERMAYER REBMANN MAXWELL & HIPPEL LLP, submits this response to the preliminary objections of respondents Giuseppe's Finer Foods, Inc. ("Giuseppe's), Gortech Global Fabrication, Inc. ("Gortech"), ICP Asset Management, Inc. ("ICP Asset") and ICP Global Holdings, Inc. ("ICP Global") (collectively "Respondents"), to RSE's Mechanics' Lien Claim ("Lien Claim" or "Lien" of "the Act"), a copy of which is attached hereto as Exhibit "A":

1. Admitted
2. Admitted
3. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, the Pennsylvania Mechanics' Lien law is a statute which speaks for itself.
4. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, the Pennsylvania Mechanics' Lien law is a statute which speaks for itself. Contrary to Respondents' allegation, Claimant, as a contractor was not required to serve Respondents with any notice.
5. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, the Pennsylvania Mechanics' Lien law is a statute which speaks for itself. Contrary to Respondents' allegation, Claimant, as a

contractor under the Mechanics' Lien Law, was not required to serve Respondents with any notice.

6. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, the Pennsylvania Mechanics' Lien law is a statute which speaks for itself.

7. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, the Pennsylvania Mechanics' Lien law is a statute which speaks for itself. Contrary to Respondents' allegation, Claimant is a contractor, not a subcontractor as defined by the Pennsylvania Mechanics' Lien Law.

8. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, the Pennsylvania Mechanics' Lien law is a statute which speaks for itself. Contrary to Respondents' allegation, Claimant is a contractor, not a subcontractor as defined by the Pennsylvania Mechanics' Lien Law.

9. Denied as stated. The Pennsylvania Mechanics' Lien Law is a statute that speaks for itself.

10. Denied as Stated. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Contrary to Respondents' allegation, Claimant is a contractor, not a subcontractor as defined by the Pennsylvania Mechanics' Lien Law.

11. Denied as Stated. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Contrary to Respondents' allegation, Claimant is a contractor, not a subcontractor, as defined by the Pennsylvania Mechanics' Lien Law.

12. Denied as Stated. By way of further response, Claimant contracted with all of Respondents as they are the alter ego and/or agents of each other.

13. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Contrary to Respondents' allegation, Claimant is a contractor, not a subcontractor, as defined by the Pennsylvania Mechanics' Lien Law and Claimant has complied with the procedures outlined for a contractor.

14. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, contrary to Respondents' allegation, Claimant is a contractor, not a subcontractor, as defined by the Pennsylvania Mechanics' Lien Law and is therefore not required to give any notice to the owner.

15. Denied as stated. The Pennsylvania Mechanics' Lien Law is a statute that speaks for itself.

16. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, contrary to Respondents' allegation, Claimant is

a contractor, not a subcontractor, as defined by the Pennsylvania Mechanics' Lien Law and is therefore not required to give any notice.

17. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant, as a contractor is in strict compliance with the requirements of the Mechanics' Lien Law.

18. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant, as a contractor is in strict compliance with the requirements of the Mechanics' Lien Law and therefore holds a valid lien claim.

19. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure.

20. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

21. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

22. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure.

23. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure.

24. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure.

25. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

26. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

27. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

28. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil

Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

29. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

30. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

31. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant, as a contractor is in strict compliance with the requirements of the Mechanics' Lien Law.

32. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant, as a contractor is in strict compliance with the requirements of the Mechanics' Lien Law.

33. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

34. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

35. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

36. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

37. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

38. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

39. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil

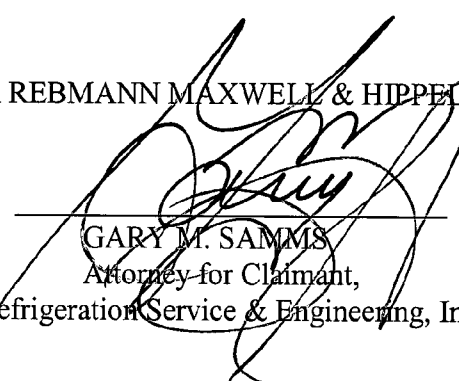
Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

40. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

41. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of further response, Claimant sufficiently avers that Respondents are the alter egos and/or agents of each other to defeat Respondents' preliminary objections.

WHEREFORE, Claimant, RSE respectfully requests that the Court overrule Respondents' Preliminary Objections to RSE's Mechanics' Lien Claim.

OBERMAYER REBMANN MAXWELL & HIPPEL LLP



GARY M. SAMMIS
Attorney for Claimant,
Refrigeration Service & Engineering, Inc.

OBERMAYER REBMANN MAXWELL & HIPPEL, LLP

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Refrigeration Service & Engineering, Inc.

Refrigeration Service & Engineering, Inc.
75 Industrial Parkway
Pottstown, PA 19464

Claimant,

v.

Giuseppe's Finer Foods, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

Gortech Global Fabrication, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Asset Management, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY

APRIL TERM, 2006

NO. 06-651-CD

RECEIVED

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COURT ADMINISTRATOR'S
OFFICE

**MEMORANDUM OF LAW IN OPPOSITION TO
RESPONDENTS' PRELIMINARY OBJECTIONS TO REFRIGERATION
SERVICE AND ENGINEERING INC.'S MECHANICS' LIEN CLAIM**

Claimant Refrigeration Service & Engineering, Inc. ("RSE") by its attorneys, OBERMAYER REBMANN MAXWELL & HIPPEL LLP, submits this memorandum of law in opposition to the preliminary objections of respondents Giuseppe's Finer Foods, Inc. ("Giuseppe's"), Gortech Global Fabrication, Inc. ("Gortech"), ICP Asset Management, Inc. ("ICP Asset") and ICP Global Holdings, Inc. ("ICP Global") (collectively "Respondents"), to RSE's Mechanics' Lien Claim ("Lien Claim" or "Lien" of "the Act").

HISTORY OF THE CASE

RSE is owed \$642,845 from Giuseppe's, Gortech, ICP Asset and ICP Global for RSE's installation of an ammonia refrigeration system to provide conditioned space and process cooling ("Refrigeration System") at 2592 Oklahoma Salem Road, DuBois, PA 15801 (the "Property") between March 11, 2005 and January 3, 2006. (RSE's Mechanics' Lien, ¶ 1) Despite repeated demands by RSE, RSE has not received payment for the labor and materials supplied to Respondents. (RSE's Mechanics' Lien, ¶ 18) Accordingly, on or about April 27, 2006, RSE filed a mechanics lien claim against Respondents for the unpaid balance.

In the Lien Claim, RSE averred that the owner of the property was ICP Global, and that Gortech, Giuseppe's, and ICP Asset shared the same address as ICP Global Holdings of 2592 Oklahoma Salem Road, DuBois, PA 15801 (RSE's Mechanics' Lien ¶¶ 4-6). Additionally, RSE made the following factual averments in its Lien Claim: (1) Giuseppe's, ICP Asset, and Gortech are the agents of one another and of ICP Global (2) Giuseppe's, ICP Asset and Gortech are the alter egos of one another and of ICP Global

(3) Giuseppe's, ICP Asset and Gortech and ICP Global all have similar incorporators, directors, and officers.; (4) The proposal to install the Refrigeration System was sent from RSE to Giuseppe's; (5) The purchase order to install the refrigeration system was signed by Gortech CFO/Executive V.P., Kenneth J. Mitchell; (6) The Change orders submitted by RSE were agreed to by Gortech; (7) The refrigeration system was installed on the property owned by ICP Global; (8) The invoices detailing work performed by RSE were submitted to Gortech; and (9) ICP Asset made partial payment for monies due and owing to RSE for the installation of the refrigeration system.

In response to RSE's Lien Claim, on or about June 27, Respondents filed preliminary objections to the Lien asserting that RSE is a subcontractor, not a contractor under the Act. Respondents allege that RSE failed to give the 30-day notice required by subcontractors under the act. Respondents also suggest that RSE did not sufficiently plead that Respondents are the alter egos and/or agents of each other. Claimant RSE submits this reply to Respondents preliminary objections.

STATEMENT OF QUESTIONS INVOLVED

1. May Respondents' challenge RSE's status as either a contractor or subcontractor under the Pennsylvania Mechanic's Lien Law, by way of a preliminary objection?

Suggested Answer: No. Pursuant to Molinaro & Son, Inc. v. Miers, 32 Lehigh L. J. 271 (1967), RSE's status as either a subcontractor or contractor as defined by the Lien Law, may not be raised by preliminary objections to its Mechanics' Lien claim.

2. Is RSE a contractor as defined under the Pennsylvania Mechanics' Lien Law?

Suggested Answer: Yes. RSE satisfies the statutory definition of a contractor, as defined by the Pennsylvania Mechanics' Lien Law.

3. Has RSE sufficiently pled that Giuseppe's, Gortech and ICP Asset are the agents and/or alter egos of one another and of ICP Global?

Suggested Answer: Yes. RSE has sufficiently pled that Giuseppe's, Gortech and ICP Asset are the agents and/or alter egos of one another and of ICP Global to defeat Respondents' Preliminary Objections.

ARGUMENT

I. Summary of Giuseppe's, Gortech's, ICP Asset's and ICP Global's Preliminary Objections

Respondents' Preliminary Objections can be divided into two distinct challenges to the sufficiency of RSE's Lien Claim. Respondents first preliminary objection to RSE's Claim is that RSE is a subcontractor, not a contractor, pursuant to the Lien Law as "all of its contracts that form the basis of the lien are with Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, Inc.", and not "with the owner which is a requirement for a claimant to be labeled a contractor under the act." (Respondent's Motion for Preliminary Objections ¶, 10, 11). Accordingly, Respondents baldly allege that, because RSE was a subcontractor under the Act, it was required to give 30 days notice to the owner of its lien claim, and its failure to do so invalidated RSE's claim. (Respondent's Motion for Preliminary Objections ¶¶, 10, 11).

Respondents' second preliminary objection is in the nature of a demurrer. Respondents assert that RSE has not sufficiently pled a cause of action on the theory that Giuseppe's, Gortech and ICP Asset are the alter egos and/or agents of each other and of

ICP Global. Accordingly, Respondents ask this Court to strike RSE's lien claim in its entirety, or in the alternative to strike paragraphs 8, 9, and 10 of the Claim.

II. Respondents' First Preliminary Objection that RSE is a Subcontractor and Not a Contractor Under Lien Law, May Not Be Raised by Preliminary Objections

Respondents ask the court to strike RSE's Lien Claim, because RSE allegedly is a subcontractor, and not a contractor, under the Lien Law. Accordingly Respondents assert that pursuant to 49 P.S. 1501, RSE was required to provide the owner with thirty days notice before filing its claim.

However, before this Court can rule on whether RSE failed to provide the requisite notice under the Lien Law, a factual determination as to whether RSE is considered a statutory contractor or a subcontractor, based on the record in the instant case, must first be made. Although Respondents in their preliminary objections ask this court to rule on this contractor/subcontractor issue, is well settled law in Pennsylvania that preliminary objections to a mechanics' lien claim based on a claimant's status as a statutory contractor or subcontractor are not allowed. See Molinaro, 32 Lehigh L. J. 271 (1967), attached hereto as Exhibit "B".

Section 505 of the Mechanics' Lien Law, 49 P. S. §1505 provides the exclusive remedy for objecting to a lien claim filed. It states in pertinent part:

"Any party may preliminarily object to a claim . . . for lack of conformity with this act . . . [and] [i]f an issue of fact is raised in such objections, the court may take evidence by deposition or otherwise . . . [and a party may] raise the same as a defense in subsequent proceedings . . ."

While 49 P.S. 1505 allows any party to file preliminary objections to a claim when the claim doesn't conform to the Lien Law, Pennsylvania caselaw prohibits preliminary objections to a Claim based on a claimant's status as a contractor or subcontractor under the Lien Law. See Molinaro, 32 Lehigh L. J. at 275.

In Molinaro, plaintiff, describing himself as a subcontractor, filed a mechanics' lien against defendant's premises. Defendant filed preliminary objections in the nature of inter alia, a motion to strike the Lien, claiming that the parties earlier agreed to a stipulation waiving the right to file a lien on the property. However, the stipulation listed the plaintiff as a "contractor", and not a subcontractor, as plaintiff alleged in his Lien Claim. Accordingly, the issue for the court on defendant's preliminary objections was first whether under the Lien Law, plaintiff was a contractor or subcontractor and second, if plaintiff was subcontractor under the Law, whether the stipulation waiving the lien barred his Mechanics' Lien claim. See id. at 272.

The Molinaro Court reviewed the relevant statutory authority and caselaw, holding that it could not decide either of the two issues set forth above. In doing so, the court reasoned:

Issues going to the merits of the claim could not be disposed of on a motion to strike, but were to be determined by a jury...It has frequently been held that the claimant's status as a contractor or subcontractor cannot be raised on defendant's motion to strike. The [Mechanics' Lien Law] has not liberalized these rulings that...the status of the claimant may [not] be raised by preliminary objections.

Id. at 274-75.

While the Molinaro Court struck the claimant's lien claim for other reasons, it concluded that plaintiff's status as a contractor or subcontractor was a question of fact, "to be determined by a jury or the court on a waiver of jury trial." Id. at 275.

Furthermore, in A.I. Wiesenberger Associates v. Jarpenn Company, 57 Pa. D. & C.2d 147 (Ct.Com.Pl. 1972), plaintiff filed a mechanic's lien claim against defendant's premises. Defendant filed preliminary objections, seeking to strike the lien claim. Defendant asserted that plaintiff did not meet the definition of a contractor under 49 P.S. 1201(4) and therefore, plaintiff had no standing to assert his lien claim.

The Court, relying on holding in Molinaro, dismissed defendant's preliminary objection to strike the lien claim. In dismissing defendant's objections, it reasoned:

In construing the provisions of section 505 of the act, Judge Henry V. Scheirer [in Molinaro] observed that the act states that preliminary objections may be made, 'to a claim upon a showing of exemption or immunity of the property from lien, or for lack of conformity with this act.' Here, defendant asserts that the lien should be stricken because the claimant was not, in fact, within the class of persons intended to be covered by the act. This is an issue going to the merits of the claim and not capable of disposition by preliminary objections.

Id. at 148. See also Morris v. Black & Sons, Inc. v. Drexel Insulation and Roofing Co., 35 North. 399; Queen City Heating Co., Inc. v. Kleinschuster, 23 Leh. 138; Kase v. Segal, 17 Berks 133; Meck v. Steidel, 26 Schuyl. 321; Howe, Inc. v. Beloff, 162 Pa. Super. 33, 56 A.2d 352 (1948).

Applying the above precedent to the instant case, it is clear that RSE's status as either a subcontractor or contractor as defined by the Lien Law, may not be raised by preliminary objections to its Mechanics' Lien claim. RSE's contractor/subcontractor status, as defined by the Lien Law, goes to the merits of RSE's Lien Claim and must be decided either at the summary judgment stage or at a trial on the merits. At this nascent preliminary objection stage, Respondents' preliminary objections must be dismissed.

III. Assuming Arguendo, this Court Disregards Molinaro, RSE Has Sufficiently Plead It Is A Contractor Under the Lien Law, To Defeat Respondents' Preliminary Objections in the Form of a Motion to Strike

Assuming arguendo that this court disregards Molinaro and attempts to assess the merits of RSE's status as a contractor or subcontractor, this court must recognize that Respondents' preliminary objections are in the nature of a motion to strike the Lien Claim for lack of conformity of this act. Pennsylvania courts require that a motion to strike must be based on defects in the pleading that are apparent on the record and not on extrinsic evidence introduced merely for arguing the motion. Lisk Plumbing and Heating Co. Inc. v. Schons, 283 Pa. Super. 344, 423 A.2d 1288 (1981) (holding that a defense to a mechanics' lien complaint which is extrinsic to the complaint itself does not justify striking the lien on a preliminary objection). Accordingly, in the instant case, the court may strike RSE's Claim only if on the face of the Claim, RSE fails to sufficiently plead that it is a contractor. However, at this early stage of the litigation, accepting all RSE's averments and well founded inferences therefrom in its Lien Claim as true for purposes of these preliminary objections, RSE has sufficiently plead that it is a contractor under the Lien Law with respect to all Respondents. Clevenstein v. Rizzuto, 439 Pa. 397, 400, 266 A.2d 623, 624 (1970). Accordingly, as more thoroughly discussed in Sections IIIA and IIIB infra, this court should deny Respondents' preliminary objections on this issue.

Although the Mechanics' Lien Act, similar to the Rules of Civil Procedure, permits the court, considering a preliminary objection to "take evidence by deposition or otherwise" in order to resolve an issue of fact, the litany of cases where this occurs do not deal with the situation in the instant case in which the validity of the lien is dependant on RSE's disputed status as a contractor or subcontractor. Compare Q-Dot Inc. v. Atlantic City Electric Co., 289 Pa. Super. 155, 432 A.2d 1098 (1981); John B. Kelly Inc. v. Phoenix Plaza Inc., 249 Pa. Super. 413, 378 A.2d 363 (1977). These cases involve,

rather, matters such as a waiver or a no-lien clause in the underlying contract, which the Mechanics' Lien Law specifically states should be raised and determined on preliminary objections. 49 Pa.C.S. §1505.

Although depositions and affidavits may be used to resolve isolated preliminary objections, preliminary objections should not replace trials and/or summary judgment practice for determining case-by-case factual issues such as the relationship between the parties involved here. As discussed in Molinaro, supra, if the question of whether RSE is a contractor under the Lien Law, which is crucial to the validity of the lien, cannot be determined on the face of the Claim, it is a question to be resolved at the summary judgment stage or at a trial on the merits. See Molinaro, 32 Lehigh L. J. at 275; Day v. Pennsylvania Railroad Co., 224 Pa. 193, 73 A. 206 (1909).

A. RSE Has Sufficiently Plead That Gortech, Giuseppe's and ICP Asset Are Subject to RSE's Mechanics' Lien As Lessees/Tenants of ICP Global's Property to Defeat Respondents' Preliminary Objections

RSE has sufficiently plead on the face of its Lien Claim, that it is a contractor with respect to Gortech, Giuseppe's and ICP Asset, not a subcontractor, under Pennsylvania Mechanics' Lien Law ("Lien Law") to defeat Respondents' objections.

Pursuant to 49 P.S. 1201(4), a contractor is defined as:

"CONTRACTOR" means one who, by contract with the owner, express or implied, erects, constructs, alters or repairs an improvement or any part thereof or furnishes labor, skill or superintendence thereto...

Furthermore, an "owner" is defined under the lien law, as:

"OWNER" means an owner in fee, **a tenant for life or years** or one having any other estate in or title to property. (emphasis added).

49 P.S. 1201(5).

Accordingly, under the lien law, a contractor includes one who by contract with a tenant for life or years, erects and/or constructs an improvement on the leased premises/property.

In the instant case, in paragraph seven of RSE's Lien Claim, RSE avers that Giuseppe's, ICP Asset and Gortech are lessees/tenants of the 2925 Oklahoma Road property, owned by ICP Global. As Respondents admit in paragraph ten of their Preliminary Objections, all of RSE's contracts are with Giuseppe's and Gortech and ICP Asset made partial payment to RSE for its work. Therefore, in the context of these preliminary objections, taking RSE's averments in its Lien Claim that Giuseppe's, ICP Asset and Gortech are lessee's/tenants of ICP Global's property, as true, coupled with Respondents admission that RSE's contracts are with these lessee's/tenants, RSE has sufficiently plead that it is a contractor, and not a subcontractor under the Lien Law. Accordingly, RSE is not required to provide any notice to Respondents before filing its Lien Claim. Therefore, RSE's sufficient pleadings mandate the overruling of Respondents' preliminary objections.

B. RSE Has Sufficiently Plead That It Is A Contractor With Respect to ICP Global As ICP Global Is the Alter Ego and/or Principle of Giuseppe's, Gortech and ICP Asset

Additionally, RSE has sufficiently pled that it is a contractor, not a subcontractor with respect to ICP Global Holdings, under the Lien Law. Contrary to Respondents' suggestion that RSE did not sufficiently plead its alter ego and/or agency theory, (See Section IV, infra), the well-pleaded averments of the Lien Claim sufficiently aver that at all relevant times Giuseppe's, Gortech, and ICP Asset were acting as the alter egos and/or agents of ICP Global, the record owner of 2525 Oklahoma Road. As set forth in Section

VI, infra, plaintiff has plead sufficient, non-boilerplate, non-legal conclusions to satisfy any factual threshold to overrule preliminary objections and to entitle it to conduct discovery and investigation into the merits of the claim. Accordingly, all actions undertaken by Giuseppe's, Gortech and/or ICP Asset, and all contracts entered into between them and RSE are construed under the law to be the actions of ICP Global, directly binding on ICP Global. Therefore, RSE has sufficiently pled it is a contractor under the Lien Law and Respondents' preliminary objections must be overruled.

The substantive law set forth above clearly holds that RSE has sufficiently plead it is a contractor under the act, and not a subcontractor. However, assuming arguendo this Court determines that a decision as to whether RSE is a statutory contractor under the Lien Law requires facts abhors the record, RSE respectfully requests this court allow RSE to take discovery on the issue and to supplement the record accordingly. Additional factual inquiries essential to RSE's contractor status will involve exploration of inter alia, the relationship among respondents, their respective functions, their contractual arrangements and their monetary interaction, both with claimant and in general.

**IV. RSE Has Sufficiently Plead that ICP Asset,
Giuseppe's and Gortech Were the Alter Egos and/or Agents of ICP Global**

In addition to erroneously preliminarily objecting to the well-pleaded Lien Claim that RSE is a contractor under the Lien Law, Respondents, in their second preliminary objection assert that RSE has not sufficiently plead a cause of action that Giuseppe's, Gortech and ICP Asset are the alter egos and/or agents of each other and of ICP Global. Accordingly, Respondents assert that RSE's Lien cannot attach to any of Respondents' entities.

However, Respondents fail to acknowledge the heavy burden they must carry to obtain dismissal. In deciding whether a Mechanics' Lien claimant sufficiently sets forth an alter ego and/or agency theory or cause of action, there is no burden on the plaintiff to **prove** the cause of action. Instead, Respondents have the heavy burden of proving that it appears with certainty that the law will not permit recovery upon any construction of the facts alleged in the Lien Claim.

Furthermore, this Court must accept as true all facts averred in RSE's Lien Claim, as well as all reasonable inferences therefrom. See Lisk Plumbing, 283 Pa. Super. 347-48, 423 A.2d 1290. The question to be resolved in Respondents' preliminary objection in the nature of a demurrer is purely legal: Is it certain from the face of the Lien Claim that the claims will not support recovery under any legal theory? See id.; Eckell v. Wilson, 597 A.2d 696, 697-98 (1991), allocatur denied, 607 A.2d 253 (1992). To ask the question is to answer it. It is inappropriate for the Court to address the merits of the matters set forth in the Lien Claim at this stage of the proceedings including whether RSE can prove on the merits that Respondents are the alter egos/or agents of one another. In re Adoption of S.P.T., 783 A.2d 779, 782 (Pa. Super. 2001). If any doubt exists, this Court should overrule the preliminary objections and allow their claim to proceed to discovery. Bourke v. Kazaras, 746 A.2d 642, 643 (Pa. Super. 2000); Bailey v. Storlazzi, 729 A.2d 1206, 1211 (Pa. Super. 1999). Viewed against this standard, and for the following reasons, this Court should deny relief to Respondents.

The averments in RSE Mechanics' Lien Claim that Giuseppe's, Gortech and ICP Asset are the alter egos and/or agents of one another and of ICP Global are sufficient to defeat Respondents' preliminary objection in the nature of a demurrer. In its Lien Claim,

RSE asserts the following material facts in support of its claim that Giuseppe's, Gortech and ICP Asset are the alter egos and/or agents of one another and of ICP Global:

1. The owner of the subject property is ICP Global Holdings, Inc., a Pennsylvania Corporation. Upon information and belief, its principal place of business is 2592 Oklahoma Salem Road, DuBois, PA 15801 (§ 5)

2. Upon information and belief, Giuseppe's, ICP and Gortech are the alter egos of one another and of ICP Global Holdings Inc. (§ 9)

3. Upon information and belief, Giuseppe's, ICP and Gortech and ICP Global Holdings Inc. all have similar incorporators, directors and officers.

4. All Respondents have the same principal place of business at 2592 Oklahoma Salem Road, DuBois, PA 15801. (§§ 3-6)

5. Between March 11, 2005 and January 3, 2006, pursuant to a proposal submitted by RSE to Giuseppe's and subsequent purchase order submitted by Gortech, RSE supplied and installed an ammonia refrigeration system to provide conditioned space and process cooling at the Property (§ 11)

6. During the Work, RSE submitted numerous change orders, on which Gortech agreed to pay the additional costs (§ 12)

7. Invoices detailing work performed and the respective costs for labor and materials were provided by RSE to Gortech, on a regular basis and serve as an accurate and complete record of the work performed on the Property by RSE (§13)

8. RSE has been paid \$1,584,369 by ICP Asset of the total amount due and owing (§15).

In view of the heavy burden Respondents must meet to attain a dismissal, and accepting the averments in RSE's Lien Claim and all reasonable inferences therefrom as true, RSE has sufficiently plead its alter ego and/or agency theory of liability. Two Pennsylvania cases, where the courts' denied Respondents' preliminary objections to a mechanics' lien claim on similar facts as the instant case, International Union of Operating Engineers v. Linesville Construction, 322 A.2d 353 (1974) and James J. Gory Mechanical Contracting, Inc. v. Turchi, 2005 WL 957702 (Pa.Com.Pl., Mar 31, 2005), are instructive to the instant case.

In International Union of Operating Engineers v. Linesville Construction, the Pennsylvania Supreme Court overruled defendants' preliminary objections in the nature of a demurer, holding that plaintiff's complaint sufficiently pled that defendants were the alter egos of each other. Plaintiff's complaint contained the following averments: (1) one defendant corporation is performing work covered by its agreement with plaintiff, under the guise of another defendant corporation in order to circumvent the terms of its agreement; (2) the owners of both defendant corporations were one and the same; (3) both corporations used the same equipment and personnel; (4) and the one defendant corporation was created by the other defendant corporation for the purpose of evading its obligations under its agreement with plaintiff. See International Union of Operating Engineers, 322 A.2d 356.

The Pennsylvania Supreme Court in holding that plaintiff's complaint sufficiently pled that each defendant corporation was the alter ego of the other, reasoned:

In essence, the complaint avers [one defendant] is performing work covered by its agreement with [plaintiff] under the guise of another corporation in order to circumvent the terms of its agreement. In short, it avers [one defendant] is the alter ego of [the other

defendant]. If this is established at trial, public policy requires that [the defendant not performing the work] be not permitted to evade its obligation under its agreement with [plaintiff] by performing work covered by that agreement through an alter ego corporation, and that the latter corporation, although not a signatory to the agreement, be ordered to be held to the agreement.

Id.

Furthermore, in James J. Gory, the court overruled defendants' preliminary objections in the nature of a demurrer. Defendants, an individual, and four separate partnerships, claimed that plaintiffs had failed to sufficiently plead that the individual was the alter ego of the four partnerships for purposes of piercing the corporate veil. See James J. Gory, 2005 WL 957702, at *1

Although the court noted, as Respondents do in the instant case, that there is a strong presumption in Pennsylvania against piercing the corporate veil, it held that, at this preliminary stage of the proceedings, plaintiff's averments that the individual defendant dominated and controlled the other partnership defendants, used them as his alter ego, misrepresented their status in dealings with plaintiffs, and kept certain partnerships undercapitalized, were sufficient to overrule defendants' demurrer. See id. Accordingly, the court overruled defendants' preliminary objections, holding that plaintiffs had sufficiently plead that the one individual defendant was the alter ego of the four partnerships and that plaintiffs would be entitled to pierce the corporate veil if they successfully proved the averments in their complaint on the lien claim, at a trial on the merits. See id.

Application of the above authority to the instant case compels the conclusion that RSE has sufficiently pled the requisite facts to sustain its claim that Respondents are the alter egos and/or agents of one another. In its Lien Claim, RSE avers the following salient

facts to support their alter ego and/or agency theories: all Respondents have their principal place of business at the same address; all Respondents have similar incorporators, officers and directors; all Respondents are the agents of one another; all Respondents are the alter egos of one another; and RSE submitted its proposal for installation of the refrigeration system on ICP Global's property to Giuseppe's, the purchase order for the refrigeration system was signed by Gortech, the change orders for the project were signed by Gortech, and partial payment for RSE's work on ICP Global's property was made by ICP Asset.

Additionally, Respondents' heavy misreliance on Lumax Industries, Inc. v. Aultman, 669 A.2d 893 (Pa.1995) is misguided. Lumax is easily distinguishable on its facts from the above cases upon which RSE relies, and is distinguishable from the instant case. In Lumax, a manufacturer sold various goods to appellant/defendant corporation. Defendant failed to remit payment for the received goods to plaintiff. Plaintiff filed a complaint for breach of contract for nonpayment against the defendant corporation and against its sole principle individually. In plaintiff's complaint, the only averments it made in asserting that the defendant corporation was the alter ego of the individual defendant were:

1. the individual defendant was the only person involved in the operation of the corporation.
2. the individual acted on behalf of herself, unjustly seeking corporate protection.

Id. at 895.

Defendants filed a demurrer, asserting that plaintiff/appellee had not sufficiently pled a cause of action for piercing the corporate veil. The trial court denied defendants'

demurrer and the Superior Court affirmed. The Supreme Court reversed the lower courts, reasoning that the allegations in plaintiff's complaint were insufficient to plead a cause of action for piercing the corporate veil or that the corporation was the alter ego of the individual. See id. at 895-96.

The Pennsylvania Supreme Court sustained defendants' demurrer because Plaintiff's averment that the individual defendant was the only person involved in the corporation (a common fact) was irrelevant and immaterial to the cause of action, and because Plaintiff's averment that the individual acted on behalf of herself, unjustly seeking corporate protection was a conclusion of law. The court further reasoned:

While it is not necessary to set forth in a pleading the evidence by which facts are to be proved, it is essential that such facts as the pleader depends upon to show the liability to be enforced shall be averred.

Id. at 895.

Accordingly, the Court reversed the Superior Court and sustained defendants' demurrer.

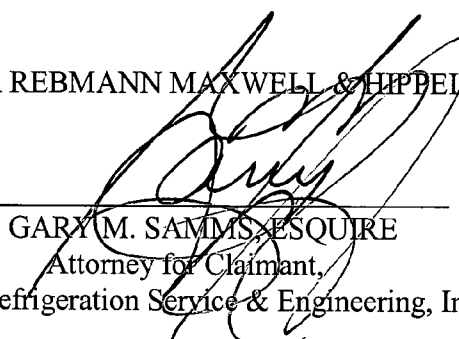
Unlike the situation in Lumax, RSE in the instant case sufficiently sets forth in its Mechanics' Lien Claim, facts supporting its Claim against ICP Global. These facts not only state a viable cause of action to overcome Respondents' demurrer, but if proven through additional discovery, will defeat a summary judgment motion filed by Respondents regarding Giuseppe's, ICP Asset's and Gortech's status as the alter egos and/or agents of ICP Global. In contrast to the averments at issue in Lumax, RSE's averments in its Lien Claim are not simply commonplace summary conclusions, but instead are substantive averments, essential to any court's or trier of fact's ultimate decision as to whether respondents are the alter egos and/or agents of one another.

Accordingly, taking the averments in RSE's Claim as true, and all reasonable inferences therefrom, RSE has sufficiently plead a cause of action against Respondents that Giuseppe's, Gortech and ICP Asset are the alter egos and/or agents of one another and of ICP Global. Therefore, Respondents' should be dismissed.

CONCLUSION

For the above reasons, RSE respectfully requests that this court enter the attached Order, denying Respondents' preliminary objections. In the alternative, RSE requests this court grant the attached Alternative Order, providing RSE substantial time to take discovery on the factual issues essential to a disposition of Respondents' preliminary objections on the merits.

OBERMAYER REBMANN MAXWELL & HIPPEL LLP



GARY M. SAMMS, ESQUIRE
Attorney for Claimant,
Refrigeration Service & Engineering, Inc.

CERTIFICATE OF SERVICE

I, Marc I. Simon, Esquire, counsel for claimant, Refrigeration Service & Engineering, Inc., certify that on August 16, 2006, a copy of the attached Reply to Respondents' Preliminary Objections and accompanying Memorandum of Law, was served *via* first class mail upon the following:



MARC I. SIMON

**COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL ACTION-(LAW)**

Refrigeration Service & Engineering, Inc.
75 Industrial Parkway
Pottstown, PA 19464

Claimant

v.

Giuseppe's Finer Foods, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

Gortech Global Fabrication, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Asset Management, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

NO. De-651-CD

Type of Case: Mechanics' Lien

Type of Pleading: Claim for Mechanics' Lien

Filed on Behalf of: Refrigeration Service and
Engineering Inc

Counsel of Record for this Party: Gary M. Samms

Supreme Court No: 58096

OBERMAYER REBMANN MAXWELL & HIPPEL, LP
1617 John F. Kennedy Boulevard
One Penn Center, 18th Floor
Philadelphia, PA 19103
(215) 665-3109

Dated: April 25, 2006

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APR 27 2006
Any pd. 20.00
see Any

William A. Shaw
Prothonotary/Clerk of Courts

OBERMAYER REBMANN MAXWELL & HIPPEL, LLP

By: Gary M. Samms, Esquire
Pennsylvania I.D. No.: 58096
1617 John F. Kennedy Boulevard
One Penn Center, 18th Floor
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(215) 665-3000

Attorney for Claimant,
Refrigeration Service & Engineering, Inc.

Refrigeration Service & Engineering, Inc.
75 Industrial Parkway
Pottstown, PA 19464

Claimant,

v.

Giuseppe's Finer Foods, Inc.
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2592 Oklahoma Salem Road
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Respondent

COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY

APRIL TERM, 2006

NO.

CLAIM FOR MECHANICS' LIEN

Claimant, Refrigeration Service & Engineering, Inc. (RSE), 75 Industrial Parkway,
Pottstown, PA 19464, files this claim against the improvements and property at 2592 Oklahoma

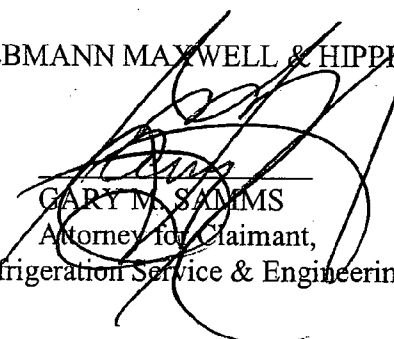
Salem Road, DuBois, PA 15801, for the payment of a debt due to claimant as a contractor for labor and materials furnished by claimant for erection and construction of an ammonia refrigeration system. In support of the claim, the claimant makes the following statement:

1. RSE is a Pennsylvania Corporation with its principal place of business located at the above-captioned address.
2. The property and improvements, (collectively, the "Property") that are the subject of this claim are located at 2592 Oklahoma Salem Road, DuBois, PA 15801 and consist of an ammonia refrigeration system, a warehouse and appurtenant land.
3. The owner of the subject property is ICP Global Holdings Inc., a Pennsylvania Corporation. Upon information and belief, its principal place of business is 2592 Oklahoma Salem Road, DuBois, PA 15801.
4. Giuseppe's Finer Foods, Inc., is a Pennsylvania Corporation. Upon information and belief, its principal place of business is 2592 Oklahoma Salem Road, DuBois, PA 15801.
5. ICP Asset Management, Inc. (ICP), is a Pennsylvania Corporation. Upon information and belief, its principal place of business is 2592 Oklahoma Salem Road, DuBois, PA 15801.
6. Gortech Global Fabrication, Inc. is a Pennsylvania Corporation. Upon information and belief, its principal place of business is 2592 Oklahoma Salem Road, DuBois, PA 15801.
7. Upon information and belief, Giuseppe's, ICP and Gortech, hold a leasehold interest in the property located at 2592 Oklahoma Salem Road, DuBois, PA 15801.
8. Upon information and belief, Giuseppe's, ICP and Gortech are the agents of one another and/or of ICP Global Holdings Inc.
9. Upon information and belief, Giuseppe's, ICP and Gortech are the alter egos of one another and of ICP Global Holdings Inc.

10. Upon information and belief, Giuseppe's, ICP and Gortech and ICP Global Holdings Inc. all have similar incorporators, directors and officers.
11. Between March 11, 2005 and January 3, 2006, pursuant to a proposal submitted by RSE to Giuseppe's and subsequent purchase order submitted by Gortech, RSE supplied and installed an ammonia refrigeration system to provide conditioned space and process cooling ("Refrigeration System"), at the Property (with the Refrigeration System, the "Work"). The proposal from RSE to Giuseppe's is attached hereto as Exhibit "A". The purchase order, signed by Gortech CFO/Executive V.P., Kenneth J. Mitchell, describing and setting forth the costs of the materials supplied, is attached hereto as Exhibit "B".
12. During the Work, RSE submitted numerous change orders, on which Gortech agreed to pay the additional costs. A copy of the change orders sent from RSE are attached hereto as Exhibit "C".
13. Invoices detailing work performed and the respective costs for labor and materials were provided by RSE to Gortech, on a regular basis and serve as an accurate and complete record of the work performed on the Property by RSE. These invoices are attached hereto as Exhibit "D".
14. The total cost for the Work and materials supplied by RSE, including the change orders, was \$2,227,214. A copy of the Transaction Details is attached hereto at Exhibit "E".
15. RSE has been paid \$1,584,369 of the total amount due and owing. Copies of the checks received by RSE from ICP Asset Management Inc. are attached hereto as Exhibit "F".
16. The unpaid balance for the labor and materials supplied by RSE is \$642,845.
17. The claimant completed its work on January 3, 2006, which is less than four (4) months before filing of this claim.
18. Despite repeated demands by RSE, RSE has not received payment for the labor and materials supplied.

WHEREFORE, claimant RSE, hereby requests judgment and that a Mechanics' Lien be entered against the property interests of ICP Global Holdings Inc., ICP Asset Management Inc., Gortech Global Fabrication Inc. and Giuseppe's Finer Foods, Inc., in the amount of \$642,845.

OBERMAYER REBMANN MAXWELL & HIPPEL LLP



GARY M. SALMS
Attorney for Claimant,
Refrigeration Service & Engineering, Inc.

VERIFICATION

I, Robert Hepp, hereby state that (a) I am authorized to make this Verification on behalf of Claimant, Refrigeration Service & Engineering, Inc., (b) the facts set forth in the foregoing Claim for Mechanics' Lien are true and correct to the best of my knowledge, information and belief; and (c) this statement is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to be 'R. Hepp', is written over a horizontal line.

ROBERT HEPP

obligation to serve in this 'quasi judicial capacity' he is under a duty to investigate all facts of a fundamental and material nature. *Kolopen v. Kolopen*, 148 Pa. Superior Ct. 311; *Cortese v. Cortese*, 163 Pa. Superior Ct. 553." Our colleague, Judge Wieand, in *Alicea v. Alicea*, No. 231 January Term, 1965, added to Judge Koch's comment, "It would seem to be elementary indeed that collusion or the absence thereof, as the case may be, is a fact of a fundamental and material nature."

ORDER

AND NOW, April 17, 1967, the within action in divorce is returned to the Master and Examiner for the purpose of taking additional testimony in accordance with the foregoing opinion.

MOLINARO & SON, INC. vs. C. GARRETT MIERS

Mechanic's Lien—Stipulation Against Liens—Preliminary Objections—Depositions.

1. Issues of fact raised by objection under Section 505 of the Mechanic's Lien Law of 1963 will be resolved by the court upon depositions taken previous to argument at the cost of the party filing the objections. Testimony will not be heard before the court unless: (1) application is made for a hearing in place of depositions; (2) compelling reasons exist which impel the court to exercise its discretion to order a hearing; and (3) the court orders a hearing to be had in place of depositions.

2. Preliminary objections to a claim under the Mechanic's Lien Law of 1963 may be made upon a showing of exemption or immunity of the property from lien, or for lack of conformity with the law. Neither the defense of stipulation against liens nor the claimant's status as contractor or subcontractor may be raised by preliminary objections.

In the Court of Common Pleas of Lehigh County, No. 102 April Term, 1965, M.L.D. *Molinaro & Son, Inc. vs.*

C. Garrett Miers. Preliminary objections to mechanic's lien claim, dismissed.

BUTZ, HUDDERS & TALLMAN, for Plaintiff.

WALKER, WALKER & THOMAS, for Defendant.

SCHEIRER, J., April 10, 1967. Plaintiff, describing himself as a subcontractor, filed a mechanic's lien against defendant's premises. Defendant filed preliminary objections in the nature of a motion to strike based on the allegation that a stipulation waiving the right to file a lien had been previously filed. The stipulation refers to the plaintiff as "contractor" and defendant maintains that such status continued to the time when the claim was filed. Following "depositions" before the court, oral argument was heard.

The parties to this action seem in a hurry and have made what appears to be a joint effort to circumvent procedure both statutory and substantive.

The stipulation was filed September 3, 1964, and the lien was filed March 1, 1965. It is apparent then that procedurally we are subject to the provisions of the Act of August 24, 1963, P. L. 1175, No. 497, 49 P.S. Sec. 1101. It is provided in Sec. 802, 49 P.S. 1802, that the act shall take effect on January 1, 1964, but shall not apply to *liens filed* prior to said date, except with respect to the practice and procedure prescribed by Article VIII. Section 505 of the Act, 49 P.S. 1505, outlines the procedure to contest a claim by the use of preliminary objections.

"Any party may preliminarily object to a claim upon a showing of exemption or immunity of the property from lien, or for lack of conformity with this act. The court shall determine all preliminary objections. *If an issue of fact is raised in such objec-*

tions, the court may take evidence by deposition or otherwise. If the filing of an amended claim is allowed, the court shall fix the time within which it shall be filed. Failure to file an objection preliminarily shall not constitute a waiver of the right to raise the same as a defense in subsequent proceedings." (Emphasis supplied.)

This matter should not have been placed on a hearing list. It is not contemplated that depositions shall be heard by the court. The phrase "by deposition or otherwise" appearing in Section 505 is a duplicate of what appears in R.C.P. 1023(c) which applies when issues of fact are raised on preliminary objections. With respect to R.C.P. 1023(c), the following statement appears in Anderson's Pennsylvania Civil Practice, Vol. 2A, page 221, "If issues of fact are raised, the court is required to decide the matter on the basis of evidence presented either in the form of depositions *or in such other form as the court shall prescribe.*

"If depositions are taken, the procedure is the same as in the taking of depositions for any other purpose. If depositions are taken, *the court does not hear the witnesses.*" (Emphasis supplied.)

In *Nickel v. McNaight*, 62 D. & C. 512, 514, the court said with respect to the same question: ". . . Thus, the court could order the taking of depositions or could hear the witnesses itself, . . ."

It is clear then that depositions generally are not heard by the court. See *Harrington v. Romano*, 9 Bucks 80. If the testimony is to be heard by the court, there should be compelling reason therefore and the court's prior discretion invoked and decision sought. This obviously is not such a case and unfortunately the court discovered the irregularity so late that it continued hearing the matter to the bitter end. The cost of taking deposi-

tions is upon the party filing the objections and accordingly the defendant will be directed to reimburse the County of Lehigh for its payment of the record in this case.

But more substantial reasons exist why the matters in issue should not have been raised on preliminary objections. It will be noted that preliminary objection to a claim may be made "upon a showing of exemption or immunity of the property from lien, or for lack of conformity with this act". The defendant-owner asserts that the lien should be stricken for the reasons that a stipulation of liens had been filed and that the claimant was in fact a contractor and not a subcontractor as stated in the claim. The Act of 1963 restricts the grounds for preliminary objections and it appears that a stipulation is not one of them. This is noted in 12 Standard Pennsylvania Practice at page 188:

"Under the Act of 1963, which appears to restrict the grounds for preliminary objections to the claim to cases where property is exempt or immune from lien, and to cases where the claim is invalid as not being in conformity with the requirements of the statute, it would seem that the existence of a no-lien contract is not ground for preliminary objection to the claim, there being nothing in the statute to indicate that the existence of a no-lien contract either renders the property exempt from lien or renders the claim invalid for lack of conformity to the statute."

This provision and interpretation is consistent with the rule in force prior to the Act of 1963. Issues going to the merits of a claim could not be disposed of on a motion to strike but were to be determined by a jury in sci. fa. proceedings. Since January 1, 1964, the procedure to obtain judgment upon a claim is in accordance with the rules relating to the action in assumpsit. R.C.P. 1651(b).

The defense of a stipulation against liens was not cognizable on a motion to strike. *Morris Black & Sons, Inc. v. Drexel Insulation and Roofing Co.*, 35 North. 399. A court in passing upon the propriety of a petition to strike off a mechanic's lien must not venture outside the record and a no-lien stipulation is generally dehors the record. *Dunham-Bush, Inc. v. Murray's 51 Lanes, Inc.*, 412 Pa. 424, 194 A. 2d 887. While the claimant in the case at bar surely was aware of the prior filing of the stipulation, the effectiveness or lack of it was dehors the record. It has frequently been held that the claimant's status as a contractor or subcontractor cannot be raised on defendant's motion to strike. *Morris Black & Sons, Inc. v. Drexel Insulation and Roofing Co.*, supra; *Queen City Heating Co., Inc. v. Kleinschuster*, 23 Leh. 138; *Kase v. Segal*, 17 Berks 133; *Meck v. Steidel*, 26 Schuyl. 321; *Howe, Inc. v. Beloff*, 162 Pa. Superior Ct. 33, 56 A. 2d 352. It is our judgment that the Act of 1963 has not liberalized these rulings and that neither a no-lien stipulation nor the status of the claimant may be raised by preliminary objections. *Sheesley v. Schmidt*, 84 Dauphin 372, decided since the effective date of the Act of 1963, held that a preliminary objection in the nature of a motion to strike is only available where defects are apparent on the record. Specifically the court ruled that the question of whether the claim was timely filed was a question of fact to be raised in a responsive answer and subsequently to be determined by a jury or the court on a waiver of jury trial. We conclude that defendant's preliminary objections must be dismissed.

In view of our ruling, we do not intend to determine the validity of the lien but we shall make several observations which may cause the parties to conclude or shorten this litigation. The owner desired to erect a warehouse to house a beer distributorship. Robert F. McCann, Jr., a manufacturer of prefabricated buildings brought the

owner and the claimant together. McCann was to furnish the shell and claimant was to furnish other materials and labor. McCann gave a total price to the owner which included the cost of the shell and claimant's costs. The owner paid McCann in full and the latter paid claimant a portion of what was owing him and retained a portion to offset a debt owed McCann in another matter. Claimant then filed his claim as a subcontractor in the face of a stipulation which he signed as contractor. Definitions in the Mechanics' Lien Act reveal that a contractor makes his agreement with the owner and a subcontractor makes an agreement with the contractor. It is difficult to determine from the testimony if any contract was made with the owner. McCann seemed to be the key figure in the interests of the owner. It is admitted that Molinaro, the claimant, hired practically all of the subcontractors and provided the labor for the job. McCann furnished the shell. Molinaro testified that he was designated as the contractor prior to the filing of the stipulation but said the arrangement changed after the filing and that McCann was to be the contractor. The evidence is thin on this point. Molinaro simply quotes McCann as saying that he, McCann, would be the contractor. The owner did not testify, apparently willing to rely on the stipulation. There is a paucity of evidence on what was said between the owner and either McCann or Molinaro, though all met together to plan the work. McCann seemed to be more of an agent of the owner than a general contractor. McCann secured a price from Molinaro for his part of the job but did little, if anything, in supervising the work. McCann said the arrangement between the parties remained the same all along and that there was no change after the stipulation was filed. He was paid the full price only as a convenience to the owner and indicated that he was not a general contractor but only a supplier of material. If claimant presents the same evidence at trial as

in the depositions, it is questionable if there is such a preponderance of evidence as would bring about the invalidating of his admittedly signed stipulation. It would be his burden to prove a contract between McCann and the owner and we reiterate the evidence as seen from our vantage point is thin. It was not explained why he did not, prior to the institution of the work, attempt to secure a waiver of the stipulation nor why McCann was not requested by the owner to sign a waiver if the relationship between the parties altered as claimant suggests. If McCann improperly withheld funds from Molinaro—and this does not now appear—the latter may assert his rights in a separate proceeding. The conflict would seem to be between these two with the owner in the proverbial middle.

ORDER

AND NOW, April 10, 1967, defendant's preliminary objections are dismissed. Defendant is directed to reimburse the County of Lehigh for the cost of depositions taken before the Court.

HERMAN vs. HERMAN

*Divorce—Desertion—Consent—Justifiable Withdrawal—
Evidence.*

1. A spouse who withdraws from the marital domicile and remains apart from her husband for the statutory period must prove consent or reasonable cause for withdrawal in order to preclude her husband from securing a divorce on the ground of desertion.
2. The withdrawing spouse must prove affirmative conduct amounting to participation in order to establish a consensual separation. Mere silence by the other party does not establish consent.
3. Where a withdrawal from the marital domicile is voluntary and without justification, the withdrawing spouse alone has the duty to seek a reconciliation.
4. The reasonable cause which is justification for a wife who abandons her husband is that, and only that, which would entitle

William A. Shaw
Prothonotary/Clerk of Courts

FILED
AUG 17 2006

OBERMAYER REBMANN MAXWELL & HIPPEL, LLP

By: GARY M. SAMMS, Esquire

I.D. No.: 58096

1617 John F. Kennedy Boulevard

One Penn Center, 18th Floor

Philadelphia, PA 19103-1895

(215) 665-3000

Attorney for Plaintiff,

Ingrid Jones

Refrigeration Service & Engineering, Inc.

v.

Giuseppe's Finer Foods, Inc..

Gortech Global Fabrication, Inc.,

ICP Asset Management, Inc., and

ICP Global Holdings Inc.

COURT OF COMMON PLEAS OF

CLEARFIELD COUNTY

APRIL TERM, 2006

NO. 06-651-CD

ORDER

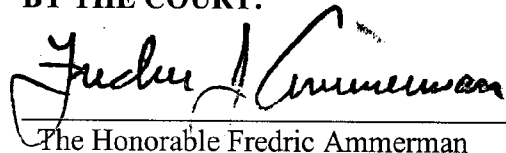
AND NOW, this 18th day of August, 2006, upon

consideration of the Motion for Continuance of plaintiff, Refrigeration Service and

Engineering, Inc., it is hereby **ORDERED** that Oral Argument currently scheduled for

August 23, 2006 is hereby rescheduled for October 2, 2006 at 10:30 A.M.

BY THE COURT:


The Honorable Fredric Ammerman

FILED

AUG 18 2006

012:45/

William A. Shaw

Prothonotary/Clerk of Courts

1 SENT TO AFIL

DATE: 8-18-00

☒ You are responsible for serving all appropriate parties.

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

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

OBERMAYER REBMANN MAXWELL & HIPPEL, LLP

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I.D. No.: 58096

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One Penn Center, 18th Floor

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COURT OF COMMON PLEAS OF

CLEARFIELD COUNTY

APRIL TERM, 2006

NO. 06-651-CD

FILED

AUG 18 2006

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William A. Shaw
Prothonotary/Clerk of Courts

MOTION FOR CONTINUANCE

1. This case was initiated by way of Mechanic's Lien filed on or about April 27, 2006, by plaintiff, Refrigeration Services & Engineering, Inc. (RSE) against Defendants.

2. On June 27, 2006, defendant Giuseppe's Finer Foods, Inc. filed Preliminary Objections to plaintiff's Mechanics Lien.

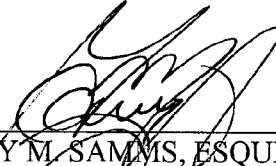
3. Oral argument on defendant's Preliminary Objections is currently scheduled for Wednesday, August 23, 2006.

4. The undersigned, counsel for plaintiff, is scheduled to be in Houston for a court-ordered mediation on August 22 and 23, 2006.

5. Counsel for plaintiff respectfully requests that oral argument in this case be rescheduled.

6. Counsel for defendant, Gregory H. Teufel, Esquire, has no objection to this request.

WHEREFORE, plaintiff requests that oral argument on defendant's Preliminary Objections be rescheduled.

A handwritten signature in black ink, appearing to read 'G. Sammis', is written over a horizontal line.

GARY M. SAMMIS, ESQUIRE
Attorney for Plaintiffs,
Refrigeration Services & Engineering, Inc.

VERIFICATION

I, Gary M. Samms, Esquire, hereby state that I am the attorney for plaintiff, Refrigeration Services & Engineering, Inc., in the foregoing action, that the facts set forth in the foregoing pleading are personally known to me. I hereby further certify that the statements in the foregoing pleading are true and correct to the best of my knowledge, information and belief. I understand that my statements are made subject to 18 Pa. C.S.A. § 4904 providing for criminal, unsworn falsification to authorities.

Date: _____

8/16/06

GARY M. SAMMS, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

REFRIGERATION SERVICE :

ENGINEERING, INC. :

VS. : NO. 06-651-CD

GIUSEPPE'S FINER FOODS, INC., :

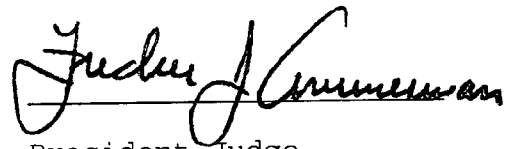
GORTECH GLOBAL FABRICATION, INC.:

and ICP GLOBAL HOLDINGS, INC. :

O R D E R

AND NOW, this 2nd day of October, 2006, Plaintiff's counsel may have no more than seven (7) days from this date in which to provide further brief to the Court. The letter brief may be submitted to the Court via fax.

BY THE COURT,


President Judge

FILED

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OCT 05 2006

ICC Attys'

G. Samms

Mohney

G. Teufel

S. Heineman

William A. Shaw
Prothonotary/Clerk of Courts

CR

DATE: 10-5-2006

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

FILED

OCT 05 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

REFRIGERATION SERVICE
ENGINEERING, INC.,
Claimant,

v.

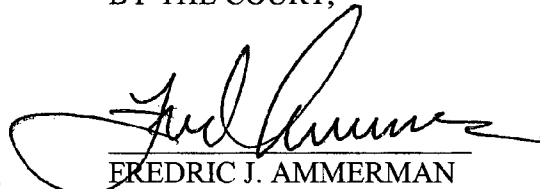
GIUSEPPE'S FINER FOODS, INC., *et al.*,
Respondents.

:
: No. 2006-651-C.D.
:
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:

ORDER

NOW, this 30th day of October 2006, after consideration of Respondents' Preliminary Objections filed June 27, 2006 and briefs submitted by the parties, it is the ORDER of this Court that the requested relief be and is hereby DENIED as being premature. The claimant is directed to file a Complaint, in conformity with the Pennsylvania Rules of Civil Procedure 1651, *et seq.*, with the Prothonotary of Clearfield County within no more than twenty days from this date.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED 100 Atty's:
01:21:30 G. Samms
OCT 31 2006 Mohney
William A. Shaw Teufel
Prothonotary/Clerk of Courts Heineman

DATE: 10/31/06

____ You are responsible for serving all appropriate parties.

X The Probationary's office has provided service to the following party

____ Plaintiff(s) X Plaintiff(s) Attorney _____ Other

____ Defendant(s) X Defendant(s) Attorney

____ Special Instructions:

FILED

OCT 31 2006

William A. Shaw
Probationary/Clerk of Courts

OBERMAYER REBMANN MAXWELL & HIPPEL, LLP

By: Gary M. Samms, Esquire

Marc. I Simon, Esquire

Pennsylvania I.D. No.: 58096 /201798

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COURT OF COMMON PLEAS OF

CLEARFIELD COUNTY

APRIL TERM, 2006

NO. 06-651-CD

FILED 7CC
m/10:21/20/06 BY Atty Samms
NOV 20 2006 (K)

William A. Shaw
Prothonotary/Clerk of Courts

NOTICE TO DEFEND

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.

**PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL AND INFORMATION SERVICE**
One Reading Center
Philadelphia Pennsylvania 19107
Telephone: (215) 238-1701

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

**ASOCIACIÓN DE LICENCIADOS DE FILADELPHIA
SERVICIO DE REFERENCIA E INFORMACIÓN LEGAL**
One Reading Center
Filadelfia, Pennsylvania 19107
Telefono: (215) 238-1701

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AND

Gortech Global Fabrication, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Asset Management, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY

APRIL TERM, 2006

NO. 06-651-CD

COMPLAINT TO OBTAIN JUDGMENT ON MECHANICS' LIEN

Plaintiff, Refrigeration Service & Engineering, Inc. ("RSE"), by and through its attorneys Obermayer Rebmann Maxwell & Hippel LLP, files this Complaint against defendants ICP Global Holdings Inc., Giuseppe's Finer Foods, Inc., ICP Asset Management, Inc. and Gortech Global Fabrication, Inc., and in support thereof, avers the following:

1. Plaintiff, RSE is a Pennsylvania Corporation with its principal place of business located at 75 Industrial Parkway, Pottstown, PA 19464.

2. Defendant Giuseppe's Finer Foods, Inc., is a Pennsylvania Corporation with its principal place of business at 2592 Oklahoma Salem Road, DuBois, PA 15801.

3. Defendant ICP Asset Management, Inc., is a Pennsylvania Corporation with its principal place of business at 2592 Oklahoma Salem Road, DuBois, PA 15801.

4. Defendant Gortech Global Fabrication, Inc. is a Pennsylvania Corporation with its principal place of business at 2592 Oklahoma Salem Road, DuBois, PA 15801.

5. Plaintiff filed a Mechanic's Lien Claim against each individual defendant on April 22, 2006 in the Court of Common Pleas of Clearfield County, as of April Term 2006, No. 06-651-CD, a copy of which is incorporated herein and attached hereto as Exhibit "A".

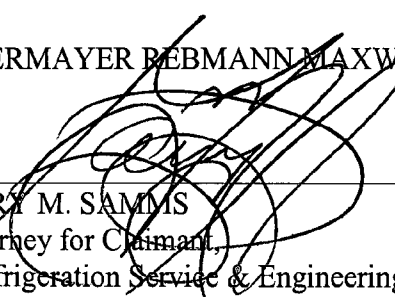
6. Defendants filed preliminary objections on plaintiff's Mechanics' Lien Claim on or about June 27, 2006, a copy of which is attached hereto as Exhibit "B".

7. On or about October 30, 2006, Judge Frederic J. Ammerman, entered an Order, overruling defendants' preliminary objections to plaintiff's Mechanics' Lien Claim. A true and correct copy of Judge Ammerman's Order is attached hereto as Exhibit "C".

8. The amount of plaintiff's claim is \$ 642,845.00.

WHEREFORE, plaintiff, Refrigeration Service & Engineering, Inc, hereby requests judgment against defendants ICP Global Holdings Inc., ICP Asset Management Inc., Gortech Global Fabrication Inc. and Giuseppe's Finer Foods, Inc., in the amount of \$642,845.00 with interest from April 22, 2006, and costs.

OBERMAYER REBMANN MAXWELL & HIPPEL LLP



GARY M. SAMMS
Attorney for Claimant,
Refrigeration Service & Engineering, Inc.

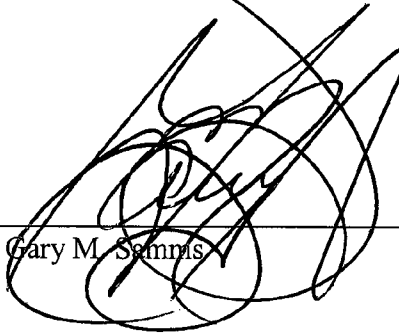
VERIFICATION

I, Gary M. Samms, hereby state that I am authorized to make this Verification on behalf of Plaintiff, Refrigeration Service & Engineering, Inc., and the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Date: _____

11/16/06

Gary M. Samms

A large, stylized handwritten signature in black ink, appearing to read 'Gary M. Samms', is written over a horizontal line.

**COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL ACTION-(LAW)**

Refrigeration Service & Engineering, Inc.
75 Industrial Parkway
Pottstown, PA 19464

Claimant

v.

Giuseppe's Finer Foods, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

Gortech Global Fabrication, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Asset Management, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

NO. De-651-CD

Type of Case: Mechanics' Lien

Type of Pleading: Claim for Mechanics' Lien

Filed on Behalf of: Refrigeration Service and
Engineering Inc

Counsel of Record for this Party: Gary M. Samms

Supreme Court No: 58096

OBERMAYER REBMANN MAXWELL & HIPPEL, LP
1617 John F. Kennedy Boulevard
One Penn Center, 18th Floor
Philadelphia, PA 19103
(215) 665-3109

Dated: April 25, 2006

FILED **COPY**
m 11:17 AM
APR 27 2006
Any pd. 20.00
Any

William A. Shaw
Prothonotary/Clerk of Courts

OBERMAYER REBMANN MAXWELL & HIPPEL, LLP

By: Gary M. Samms, Esquire
Pennsylvania I.D. No.: 58096
1617 John F. Kennedy Boulevard
One Penn Center, 18th Floor
Philadelphia, PA 19103-1895
(215) 665-3000

Attorney for Claimant,
Refrigeration Service & Engineering, Inc.

Refrigeration Service & Engineering, Inc.
75 Industrial Parkway
Pottstown, PA 19464

Claimant,

v.

Giuseppe's Finer Foods, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

Gortech Global Fabrication, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Asset Management, Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

AND

ICP Global Holdings Inc.
2592 Oklahoma Salem Road
DuBois, PA 15801

Respondent

COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY

APRIL TERM, 2006

NO.

CLAIM FOR MECHANICS' LIEN

Claimant, Refrigeration Service & Engineering, Inc. (RSE), 75 Industrial Parkway,
Pottstown, PA 19464, files this claim against the improvements and property at 2592 Oklahoma


Salem Road, DuBois, PA 15801, for the payment of a debt due to claimant as a contractor for labor and materials furnished by claimant for erection and construction of an ammonia refrigeration system. In support of the claim, the claimant makes the following statement:

1. RSE is a Pennsylvania Corporation with its principal place of business located at the above-captioned address.
2. The property and improvements, (collectively, the "Property") that are the subject of this claim are located at 2592 Oklahoma Salem Road, DuBois, PA 15801 and consist of an ammonia refrigeration system, a warehouse and appurtenant land.
3. The owner of the subject property is ICP Global Holdings Inc., a Pennsylvania Corporation. Upon information and belief, its principal place of business is 2592 Oklahoma Salem Road, DuBois, PA 15801.
4. Giuseppe's Finer Foods, Inc., is a Pennsylvania Corporation. Upon information and belief, its principal place of business is 2592 Oklahoma Salem Road, DuBois, PA 15801.
5. ICP Asset Management, Inc. (ICP), is a Pennsylvania Corporation. Upon information and belief, its principal place of business is 2592 Oklahoma Salem Road, DuBois, PA 15801.
6. Gortech Global Fabrication, Inc. is a Pennsylvania Corporation. Upon information and belief, its principal place of business is 2592 Oklahoma Salem Road, DuBois, PA 15801.
7. Upon information and belief, Giuseppe's, ICP and Gortech, hold a leasehold interest in the property located at 2592 Oklahoma Salem Road, DuBois, PA 15801.
8. Upon information and belief, Giuseppe's, ICP and Gortech are the agents of one another and/or of ICP Global Holdings Inc.
9. Upon information and belief, Giuseppe's, ICP and Gortech are the alter egos of one another and of ICP Global Holdings Inc.

10. Upon information and belief, Giuseppe's, ICP and Gortech and ICP Global Holdings Inc. all have similar incorporators, directors and officers.
11. Between March 11, 2005 and January 3, 2006, pursuant to a proposal submitted by RSE to Giuseppe's and subsequent purchase order submitted by Gortech, RSE supplied and installed an ammonia refrigeration system to provide conditioned space and process cooling ("Refrigeration System"), at the Property (with the Refrigeration System, the "Work"). The proposal from RSE to Giuseppe's is attached hereto as Exhibit "A". The purchase order, signed by Gortech CFO/Executive V.P., Kenneth J. Mitchell, describing and setting forth the costs of the materials supplied, is attached hereto as Exhibit "B".
12. During the Work, RSE submitted numerous change orders, on which Gortech agreed to pay the additional costs. A copy of the change orders sent from RSE are attached hereto as Exhibit "C".
13. Invoices detailing work performed and the respective costs for labor and materials were provided by RSE to Gortech, on a regular basis and serve as an accurate and complete record of the work performed on the Property by RSE. These invoices are attached hereto as Exhibit "D".
14. The total cost for the Work and materials supplied by RSE, including the change orders, was \$2,227,214. A copy of the Transaction Details is attached hereto at Exhibit "E".
15. RSE has been paid \$1,584,369 of the total amount due and owing. Copies of the checks received by RSE from ICP Asset Management Inc. are attached hereto as Exhibit "F".
16. The unpaid balance for the labor and materials supplied by RSE is \$642,845.
17. The claimant completed its work on January 3, 2006, which is less than four (4) months before filing of this claim.
18. Despite repeated demands by RSE, RSE has not received payment for the labor and materials supplied.

WHEREFORE, claimant RSE, hereby requests judgment and that a Mechanics' Lien be entered against the property interests of ICP Global Holdings Inc., ICP Asset Management Inc., Gortech Global Fabrication Inc. and Giuseppe's Finer Foods, Inc., in the amount of \$642,845.

OBERMAYER REBMANN MAXWELL & HIPPEL LLP



GARY M. SAMMS
Attorney for Claimant,
Refrigeration Service & Engineering, Inc.

VERIFICATION

I, Robert Hepp, hereby state that (a) I am authorized to make this Verification on behalf of Claimant, Refrigeration Service & Engineering, Inc., (b) the facts set forth in the foregoing Claim for Mechanics' Lien are true and correct to the best of my knowledge, information and belief; and (c) this statement is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to be 'R. Hepp', is written over a horizontal line.

ROBERT HEPP

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

REFRIGERATION SERVICE
ENGINEERING, INC.

Claimant

VS.

GIUSEPPE'S FINER FOODS,
INC., GORTECH GLOBAL
FABRICATION, INC., ICP
ASSET MANAGEMENT, INC.,
and ICP GLOBAL HOLDINGS,
INC.

Respondents

NO. 06-651-CD

TYPE OF CASE: CIVIL

TYPE OF PLEADING: PRELIMINARY
OBJECTIONS

FILED ON BEHALF OF: RESPONDENT

COUNSEL OF RECORD:

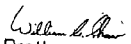
GREGORY H. TEUFEL, ESQ.
SARAH B. HEINEMAN, ESQ.
SCHNADER HARRISON SEGAL &
LEWIS LLP
FIFTH AVENUE PLACE, SUITE 2700
120 FIFTH AVENUE
PITTSBURGH, PA 15222
(412) 577.5200

CHRISTOPHER E. MOHNEY, ESQ.
25 EAST PARK AVENUE, SUITE 6
DUBOIS, PA 15801
(814) 375.1044

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JUN 27 2006

Attest.


Prothonotary/
Clerk of Courts

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REFRIGERATION SERVICE &
ENGINEERING, INC.

Claimant,

v.

GIUSEPPE'S FINER FOODS, INC.,
GORTECH GLOBAL FABRICATION, INC,
ICP ASSET MANAGEMENT INC., and
ICP GLOBAL HOLDINGS, INC.

Respondents.

Case No. 06-651-CD

RESPONDENTS' PRELIMINARY OBJECTIONS

Giuseppe's Finer Foods, Inc., Gortech Global Fabrication, Inc., ICP Asset Management, Inc., and ICP Global Holdings Inc. (hereinafter collectively referred to as "Respondents") through its undersigned counsel, hereby files its brief in support of its Preliminary Objections pursuant to 49 P.S. § 1505 (2005) of Claimant's Mechanics' Lien Claim:

1. Claimant, Refrigeration Service & Engineering, Inc filed a mechanic's claim against Giuseppe's Finer Foods, Inc., Gortech Global Fabrication, Inc., ICP Asset Management, Inc., and ICP Global Holdings Inc. (hereinafter collectively referred to as "Respondents") for the payment of a debt for the labor and materials provided by Claimant.

2. Claimant avers that ICP Global Holdings Inc. is the owner of the property that is the subject of this claim.

3. Any party may preliminarily object to a claim upon a showing of exemption or immunity of the property from lien, or for lack of conformity with this act. 49 P.S. § 1505. The Mechanics' Lien Law is a creature of statute in derogation of the common law and must be given strict construction. *King's Oak Liquidators v. Bala Cynwyd Hotel Associates*, 405 Pa. Super. 250, 592 A.2d 102 (1991).

4. This Mechanic's Lien Claim is invalid since Claimant failed to serve Respondents with proper notice.

5. Claimant, as a subcontractor, failed to serve Defendant with notice as required by the Mechanic's Lien Act of 1963 ("Act.")

6. Therefore, it is invalid and must be stricken.

7. Claimant is a subcontractor as defined under the Act

8. Contrary to Plaintiff's averments in its claim, it is a subcontractor as defined under the Act and not a contractor.

9. 49 P.S. § 1201 provides the definitions of contractor and subcontractor in per part:

The following words, terms and phrases when used in this act shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(4) "CONTRACTOR" means one who, **by contract with the owner**, express or implied, erects, constructs, alters or repairs an improvement or any part thereof or furnishes labor, skill or superintendence thereto; or supplies or hauls materials, fixtures, machinery or equipment reasonably necessary for and actually used therein; or any or all of the foregoing, whether as superintendent, builder or materialman. The term also includes an architect or engineer who, by contract with the owner, express or implied, in addition to the preparation of drawings, specifications and contract documents also superintends or supervises any such erection, construction, alteration or repair.

(5) "SUBCONTRACTOR" means one who, by contract with the contractor, express or implied, erects, constructs, alters or repairs an improvement or any part thereof; or furnishes labor, skill or superintendence thereto; or supplies or hauls materials, fixtures, machinery or equipment reasonably necessary for and actually used therein; or any or all of the foregoing, whether as superintendent, builder or materialman. The term does not include an architect or engineer who contracts with a contractor or subcontractor, or a person who contracts with a subcontractor or with a materialman.

49 P.S. § 1201(2005)(emphasis added).

10. Claimant contends that it is a contractor; however, all of its contracts that form the basis for this lien are with Giuseppe's Finer Foods, Inc. and Gortech Global Fabrication, Inc.

11. Claimant does not have any contracts with the owner; which is a requirement for a claimant to be labeled a contractor under the Act.

12. Moreover, Claimant does not even allege that it contracted with the owner ICP Global Holdings, Inc.

13. Therefore, for purposes under the Act, Claimant must follow the procedures outlined for a subcontractor.

14. Claimant failed to give requisite 30 day notice, thereby rendering this Claim invalid.

15. 49 P.S. § 1501 outlines the notice requirement subcontractors are mandated to provide to the owner. 1501 provides in pertinent:

(b) Formal notice in all cases by subcontractor. No claim by a subcontractor, whether for erection or construction or for alterations or repairs, shall be valid unless, at least thirty (30) days before the same is filed, he shall have given to the owner a formal written notice of his intention to file a claim, except that such notice shall not be required where the claim is filed pursuant to a rule to do so as provided by section 506.

49 P.S. § 1501(b).

16. Claimant never gave the owner the requisite formal written notice of its intent to file this claim. This is evident by the fact that Claimant does not state in its claim the date of such notice to owner.¹

¹ 49 P.S. 1503(4) requires a subcontractor to state in the claim the date of the requisite notice it served upon owner.

17. In order to effectuate a valid lien claim, the contractor or subcontractor must be in strict compliance with the requirements of the Mechanics' Lien Law. *Castle Pre-Cast Superior Walls of Delaware, Inc. v. Strauss-Hammer*, 416 Pa. Super. 53, 610 A.2d 503 (1992).

18. Accordingly, the Claim is invalid per the requirements of 49 P.S. 1501(b) and the case law.

19. Therefore, this claim must be stricken.

20. Claimant surreptitiously tries to circumvent this notice requirement by averring that it is a contractor and the entities it contracted with are merely alter egos of the owner entity ICP².

21. However, claimant does not plead any of the requisite facts to support this conclusory averment that these entities are alter egos of each other.

22. The alter ego theory is applicable where the individual or corporate owner controls the corporation to be pierced and the controlling owner is to be held liable." *Miners, Inc. v. Alpine Equipment Corp.*, 722 A.2d 691, 695 (Pa. Super. 1998)

23. There is a strong presumption in Pennsylvania against piercing the corporate veil. *Wedner v. Unemployment Board*, 449 Pa. 460, 464, 296 A.2d 792, 794 (1972)

24. "Any court must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception. . . . Care should be taken on all occasions to avoid making the entire theory of corporate entity * * * useless." *Id.*

25. The factors to be considered in disregarding the corporate form as follows: undercapitalization, failure to adhere to corporate formalities, substantial intermingling of

² Claimant also alleges that the entities are agents of each other, but offer no facts to support this legal conclusion.

corporate and personal affairs and use of the corporate form to perpetrate fraud. *Lumax Indus. v. Aultman*, 543 Pa. 38, 41-42 (Pa. 1995).

26. Claimant has similarly failed to plead any facts to support its conclusory allegations that the entities are “alter egos” of the owner entity.

27. The only factual averment claimant proffers to support this alter ego averment is the entities have similar incorporators, directors, and officers. This fact does not support any of the factors outlined in *Lumax*.

28. Moreover, there is a strong legal presumption not pierce the corporate veil.

29. Claimant has not alleged any facts to overcome this presumption.

30. Accordingly, these entities are not alter egos of each other.

31. Simply, as set forth above, Claimant is a subcontractor as defined under the Act. Claimant failed to adhere to the notice requirements mandated under the Act.

32. Therefore, this claim is invalid and must be stricken.

33. In the alternative, Claimant’s averments that entities in the claim are alter egos and/or agents of each other must be stricken.

34. If this Honorable court does not strike this claim for noncompliance with the Act, the averments of that the entities in the claim are alter egos and/or agents of each must be stricken.

35. As set forth above, Claimant’s averments that the entities in the claim are alter egos of one other is not factually supported.

36. The case law requires that in order to sustain such an allegation, it must be supported by facts that fall into one of the enumerated factors. *Lumax supra*.

37. Without the required factual support of the alter ego allegation, as a matter of law these allegations must be stricken.

38. Similarly, Claimant fails to allege any facts to support that the entities are "agents of one another."

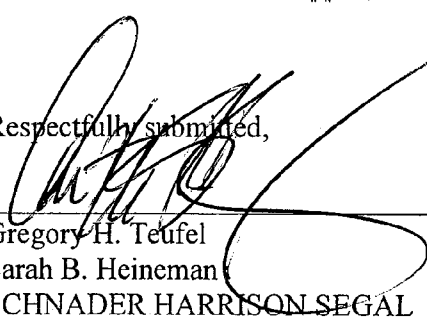
39. Again, Claimant cannot sustain these legal conclusions without factual support. Pa. R.C.P. No. 1019(a) states that "the material facts on which a cause of action or defense is based shall be stated in a concise and summary form."

40. In the present case, claimant does not plead any facts to support the legal conclusion that the entities are agents of each other.

41. Therefore, these averments must be stricken from the claim.

Wherefore, the Respondents respectfully requests that the Court strike Claimant's Mechanics' Lien Claim for noncompliance with the Mechanics' Lien Act of 1963. In the alternative, Respondents request that the Court strike Claimants ¶¶ 8,9,10 in Claimant's Mechanics' Lien Claim.

Respectfully submitted,



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Sarah B. Heineman
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& LEWIS LLP
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25 East Park Avenue, Suite 6
DuBois, PA 15801
(814) 375.1044

Attorneys for Respondents

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

REFRIGERATION SERVICE
ENGINEERING, INC.,
Claimant,

No. 2006-651-C.D.

v.

GIUSEPPE'S FINER FOODS, INC., *et al.*,
Respondents.

ORDER

NOW, this 30th day of October 2006, after consideration of Respondents' Preliminary Objections filed June 27, 2006 and briefs submitted by the parties, it is the ORDER of this Court that the requested relief be and is hereby DENIED as being premature. The claimant is directed to file a Complaint, in conformity with the Pennsylvania Rules of Civil Procedure 1651, *et seq.*, with the Prothonotary of Clearfield County within no more than twenty days from this date.

BY THE COURT,

/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN

President Judge
I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

OCT 31 2006

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

FILED

NOV 20 2006

**William A. Shaw
Prothonotary/Clerk of Courts**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102210
NO: 06-651-CD
SERVICE # 1 OF 4
COMPLAINT TO OBTAIN JUDGMENT ON

MECHANICS' LIEN

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS INC. al

SHERIFF RETURN

NOW, December 06, 2006 AT 11:46 AM SERVED THE WITHIN COMPLAINT TO OBTAIN JUDGMENT ON MECHANICS' LIEN ON GORTECH GLOBAL FABRICATION, INC. DEFENDANT AT 2592 OKLAHOMA SALEM ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO LINDA KNISELY, DIRECTOR/HUMAN RESOURCES A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT TO OBTAIN JUDGMENT ON MECHANICS' LIEN AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

FILED
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DEC 08 2006
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102210
NO: 06-651-CD
SERVICE # 2 OF 4
COMPLAINT TO OBTAIN JUDGMENT ON

MECHANICS' LIEN

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS INC. et al

SHERIFF RETURN

NOW, December 06, 2006 AT 11:46 AM SERVED THE WITHIN COMPLAINT TO OBTAIN JUDGMENT ON MECHANICS' LIEN ON ICP GLOBAL HOLDINGS INC. DEFENDANT AT 2592 OKLAHOMA SALEM ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO LINDA KNISELY, DIRECTOR/HUMAN RESOURCES A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT TO OBTAIN JUDGMENT ON MECHANICS' LIEN AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102210
NO: 06-651-CD
SERVICE # 3 OF 4
COMPLAINT TO OBTAIN JUDGMENT ON

MECHANICS' LIEN

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS INC. et al

SHERIFF RETURN

NOW, December 06, 2006 AT 11:46 AM SERVED THE WITHIN COMPLAINT TO OBTAIN JUDGMENT ON MECHANICS' LIEN ON ICP ASSET MANAGEMENT, INC. DEFENDANT AT 2592 OKLAHOMA SALEM ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO LINDA KNISELY, DIRECTOR/HUMAN RESOURCES A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT TO OBTAIN JUDGMENT ON MECHANICS' LIEN AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102210
NO: 06-651-CD
SERVICE # 4 OF 4
COMPLAINT TO OBTAIN JUDGMENT ON

MECHANICS' LIEN

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS INC. al

SHERIFF RETURN

NOW, December 06, 2006 AT 11:46 AM SERVED THE WITHIN COMPLAINT TO OBTAIN JUDGMENT ON MECHANICS' LIEN ON GIUSEPPE'S FINER FOODS, INC. DEFENDANT AT 2592 OKLAHOMA SALEM ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO LINDA KNISELY, DIRECTOR/HUMAN RESOURCES A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT TO OBTAIN JUDGMENT ON MECHANICS' LIEN AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102210
NO: 06-651-CD
SERVICES 4
COMPLAINT TO OBTAIN JUDGMENT ON

MECHANICS' LIEN

PLAINTIFF: REFRIGERATION SERVICE & ENGINEERING, INC.

vs.

DEFENDANT: GIUSEPPE'S FINER FOODS INC. al

SHERIFF RETURN

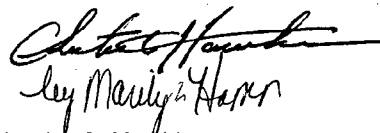
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	OBERMAYER	131596	40.00
SHERIFF HAWKINS	OBERMAYER	131596	52.91

Sworn to Before Me This

_____ Day of _____ 2006

So Answers,



Chester A. Hawkins
Sheriff

OBERMAYER REBMANN MAXWELL & HIPPEL, LLP

By: GARY M. SAMMS, Esquire

I.D. No.: 58096

1617 John F. Kennedy Boulevard

One Penn Center, 18th Floor

Philadelphia, PA 19103-1895

(215) 665-3000

Attorney for Plaintiff,
Refrigeration Service
& Engineering, Inc.

Refrigeration Service & Engineering, Inc.

v.

Giuseppe's Finer Foods, Inc..
Gortech Global Fabrication, Inc.,
ICP Asset Management, Inc., and
ICP Global Holdings Inc.

COURT OF COMMON PLEAS OF

CLEARFIELD COUNTY

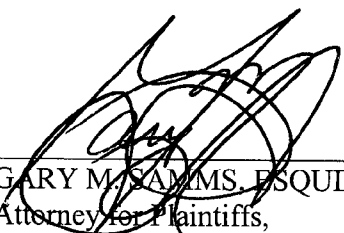
APRIL TERM, 2006

NO. 06-651-CD

**PRAECIPE TO MARK MECHANIC'S LIEN STRICKEN,
SETTLED, DISCONTINUED AND ENDED**

TO THE PROTHONOTARY:

Kindly mark the Mechanic's Lien in the above action stricken, settled,
discontinued and ended.


GARY M. SAMMS, ESQUIRE
Attorney for Plaintiffs,
Refrigeration Services & Engineering, Inc.

FILED ICCd 1 cert of disc
issued to
m/12.00m
MAR 05 2007
William A. Shaw
Prothonotary/Clerk of Courts
Copr to C/A
Atty Samms
Atty Heinaman

FILED

MAR 05 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Refrigeration Service & Engineering, Inc.

Vs.

No. 2006-00651-CD

Giuseppe's Finer Foods, Inc.
Gortech Global Fabrication, Inc.
ICP Asset Management, Inc.
ICP Global Holdings, Inc.

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 March 5, 2007, marked:

Stricken, settled, discontinued and ended

Record costs in the sum of \$20.00 have been paid in full by Olbermayer Rebmann Maxwell.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 5th day of March A.D. 2007.



William A. Shaw, Prothonotary