

06-1120-CD
Ralph Morgan et al vs Richard Maney et al

2006-1120-CD
Ralph Morgan et al vs Richard Maney et al

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

RALPH W. MORGAN, t/d/b/a MORGAN'S EXCAVATING,	:	No. 2006- 1120-CD
	:	
Plaintiff	:	
	:	
	:	
	:	
RICHARD L. MANEY, t/d/b/a R. L. MANEY,	:	
	:	
Defendant	:	IN REPLEVIN

NOTICE

TO: RICHARD L. MANEY, t/d/b/a R. L. MANEY, Defendant

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. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

FILED Atty pd. 85.00
JUL 13 2006
HHC Shff

William A. Shaw
Prothonotary/Clerk of Courts

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

RALPH W. MORGAN, t/d/b/a MORGAN'S EXCAVATING,	:	No. 2006-
	:	
Plaintiff	:	
	:	
v.	:	
	:	
RICHARD L. MANEY, t/d/b/a R. L. MANEY,	:	
	:	
Defendant	:	IN REPLEVIN

COMPLAINT IN REPLEVIN

AND NOW, comes the Plaintiff, Ralph W. Morgan, t/d/b/a Morgan's Excavating, by and through his attorneys, Bierbach McDowell Zanic, and file the following Complaint:

1. Plaintiff is Ralph W. Morgan, an adult individual trading and doing business as Morgan's Excavating, with an address of 15408 Hill Valley Road, Mount Union, Huntingdon County, Pennsylvania 17066.

2. Defendant is Richard L. Maney, an adult individual trading and doing business as R. L. Maney, with an address of 335 Keewaydin Road, Frenchville, Clearfield County, Pennsylvania 16836.

3. Plaintiff, Ralph W. Morgan, is the successor in interest to Morgan's Excavating, previously owned by his father and mother, Leon Morgan and Loretta Morgan.

4. On September 4, 2002, Plaintiff purchased two (2) bulldozers, being further identified by Serial Numbers HD41B 75S03568 and HD41B 75S03150. The sum of Fifteen Thousand and 00/100 (\$15,000.00) Dollars was paid on September 4, 2002, and the sum of Seventeen Thousand Five Hundred and 00/100 (\$17,500.00) Dollars was paid on September 19, 2002. A copy of an invoice dated September 4, 2002, is attached hereto, made a part hereof and identified as Exhibit "A."

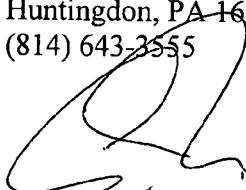
IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

David S. Meholic, Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

BIERBACH McDOWELL ZANIC

By: Thomas E. McDowell

Thomas E. McDowell, Esquire
Supreme Court ID #37235
Attorney for Plaintiff
113 Fourth Street
Huntingdon, PA 16652
(814) 643-3555

By: 

Charles A. Bierbach, Esquire
Supreme Court ID #16277
Attorney for Plaintiff
113 Fourth Street
Huntingdon, PA 16652
(814) 643-3555

DATED: July 12, 2006

5. Plaintiff, Ralph W. Morgan, signed the receipt for the equipment on September 4, 2002. On September 19, 2002, the sum of Seventeen Thousand Five Hundred and 00/100 (\$17,500.00) Dollars was paid, and Leon Morgan, t/d/b/a Morgan's Excavating, took possession of said equipment. A copy of the Bill of Sale for the equipment is attached hereto, made a part hereof and identified as Exhibit "B."

6. On September 19, 2002, Plaintiff took possession of the bulldozer identified by Serial Number HD41B 75S03568 by having two (2) mechanics work for approximately two (2) weeks to have the bulldozer be operational and then moved the bulldozer to Plaintiff's jobsite. The other bulldozer identified by Serial Number HD41B 75S03150 was left on the premises of R. L. Maney with the understanding verbally and in writing that, because the equipment was not operational and weighs nearly one hundred (100) tons, the bulldozer and miscellaneous parts were to be kept on the Defendant's property and Plaintiff was to have access to the same at any time.

7. Pursuant to the terms of the Bill of Sale, Plaintiff possessed and retained legal title and all rights of ownership to the above-described property, namely the bulldozer further identified as Serial Number HD41B 75S03150, and that the miscellaneous parts could be stored on the Defendant's property with Plaintiff having access to those parts at any time.

8. Pursuant to the agreement between the parties, in October 2004, Plaintiff engaged the services of a subcontractor who used a boom truck and picked up the track from the disabled bulldozer for use on the Plaintiff's other bulldozer.

9. On another occasion in September 2004, Plaintiff, in cooperation with Defendant, obtained four (4) rollers and Defendant allow the use of his tow motor to load the four (4) rollers onto the Plaintiff's truck.

10. On or about June 26, 2006, Plaintiff contacted the Defendant with the intent of obtaining additional parts, namely chains relating to the operation of the bulldozer. Defendant at the time indicated that he was not sure, but that they may have burned up the bulldozer for scrap. On June 26, 2006, Plaintiff, in person, confirmed that the equipment, parts and bulldozer were still on the R. L. Maney property.

11. Plaintiff believes and avers that the bulldozer being further identified by Serial Number HD41B 75S03150 and miscellaneous parts are still on the Defendant's premises as he has confirmed that the same were on the property near Frenchville, Clearfield County, Pennsylvania, on June 26, 2006.

12. Plaintiff believes that the fair market value of the bulldozer, as it sits, is Fifteen Thousand and 00/100 (\$15,000.00) Dollars. He further believes that it would cost approximately Five Thousand and 00/100 (\$5,000.00) Dollars to remove the various items of the bulldozer and further that it would require an overload permit from the Pennsylvania Department of Transportation to haul the bulldozer on the highway.

13. On July 3, 2006, Plaintiff was told by the Defendant that he would be arrested if he came to get any of his parts.

14. The Defendant has threatened that he was offered Ten Thousand and 00/100 (\$10,000.00) Dollars by someone for the scrap value of the bulldozer and that if the Plaintiff wanted the bulldozer, he could pay Ten Thousand and 00/100 and 00/100 (\$10,000.00) Dollars and get the scrap value of the bulldozer and that Defendant's agreement was that Plaintiff had to get the parts from the Defendant's property within one (1) year of September 19, 2002, all of this being contrary to the verbal and written agreement.

15. Defendant has failed and refused to relinquish possession of Plaintiff's property in accordance with Plaintiff's request and has stated that he will call the police should the Plaintiff come on to his premises.

16. Plaintiff has been and will continue to be damaged by Defendant's wrongful detention of Plaintiff's property in an amount which cannot be computed until the removal of Plaintiff's property from Defendant's property is complete, including but not limited to amounts expended in recovering Plaintiff's property and the cost of manpower and equipment to remove Plaintiff's property from Defendant's property.

17. Defendant's wrongful detention of Plaintiff's property has been outrageous, willful, wanton and/or in reckless disregard of Plaintiff's rights, and Plaintiff, therefore, seeks recover of punitive damages.

WHEREFORE, Plaintiff demands:

a. possession of the miscellaneous parts and the bulldozer, being further identified by Serial Number HD41B 75S03150;

b. special damages set forth above for amounts expended in recovering Plaintiff's property and the cost of manpower and equipment to remove Plaintiff's property from Defendant's property;

- c. punitive damages;
- d. costs and attorney's fees to the extent allowed by law; and
- e. such other and further relief as the Court deems just and equitable.

BIERBACH McDOWELL ZANIC

By: 

Thomas E. McDowell, Esquire
Attorney for Plaintiff
113 Fourth Street
Huntingdon, PA 16652
(814) 643-3555
Supreme Court I.D. 37235

By: 

Charles A. Bierbach, Esquire
Supreme Court ID #16277
Attorney for Plaintiff
113 Fourth Street
Huntingdon, PA 16652
(814) 643-3555

DATED: July 12, 2006



R.L. MANEY

R.D. 1 Box 159 Frenchville, PA 16836
(814) 263-4959 FAX (814) 263-4995

CUSTOMER'S ORDER NO.		PHONE		DATE 9-04-02			
NAME MORGAN'S EXCAVATING							
ADDRESS RR #1 BOX 1461 MT UNION PA							
814-542-9628 17066							
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE. RET'D.	PAID OUT	
QTY.	DESCRIPTION				PRICE	AMOUNT	
HD 410 75503568							
HD 410 75503150 32,500.00							
PAID DEPOSIT <u>15,000.00</u>							
CHECK #3485 17,500.00							
BALANCE ON DELIVERY							
BILL OF SALE ON DELIVERY							
RECEIVED BY					TAX		
TOTAL							

1087

All claims and returned goods
MUST be accompanied by this bill.

PRODUCT 610

Thank You

EXHIBIT

"A"

BILL OF SALE

This Bill of Sale, executed the 19th day of September, 2002 WITNESSETH that in consideration of \$ 32,500.00, which is hereby acknowledged, Thirty-two Thousand, Five-hundred and .00/100 R. L. Maney, (Sellers), do hereby sell, transfer, and convey unto Morgan Excavating, Mt. Union, PA 17066, (Buyer) all the right, title and interest of Sellers in and to the following property:

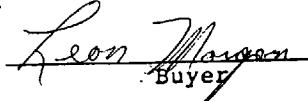
1 HD41B 75S03568 Bulldozer
1 HD41B 75S03150 Bulldozer

located at Frenchville, PA, Clearfield Co., 9/04/02 as of the date thereof.

Sellers hereby warrant title to the equipment being sold and transferred herein. Have no titles.

SELLER MAKES NO WARRANTIES OF ANY KIND AS TO CONDITION OF THE EQUIPMENT. ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FOR ANY USE, WHATSOEVER, ARE HEREBY DISCLAIMED. THE PROPERTY IS USED AND IS SOLD ON AN "AS IS, WHERE IS" BASIS.

Buyer hereby accepts equipment on an "as is, where is" basis. WITHOUT ANY WARRANTIES OF ANY KIND.

 (Seal)
Buyer

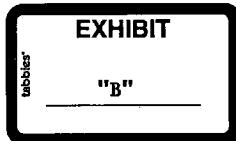
IN WITNESS WHEREOF, the parties herein set their hands

and seals this 19th day of September, 2002.

 (Seal)
Seller

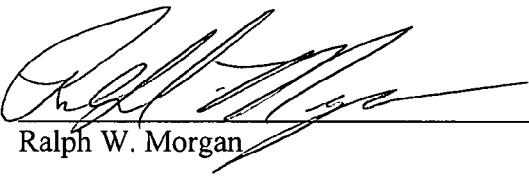
Bulldozer with S/N 75S03150 & miscellaneous parts can be stored on the Maney property and Mr. Morgan has access to these parts at any time.

Equipment is free of liens and encumbrance.



VERIFICATION

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



Ralph W. Morgan

DATED: 7/12/06

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101711
NO: 06-1120-CD
SERVICE # 1 OF 1
COMPLAINT IN REPLEVIN

PLAINTIFF: RALPH W. MORGAN t/d/b/a MORGAN'S EXCAVATING

vs.

DEFENDANT: RICHARD L. MANEY t/d/b/a R.L. MANEY

SHERIFF RETURN

NOW, July 14, 2006 AT 10:43 AM SERVED THE WITHIN COMPLAINT IN REPLEVIN ON RICHARD L. MANEY t/d/b/a R.L. MANEY DEFENDANT AT 335 KEEWAYDIN ROAD, FRENCHVILLE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO BEATRICE MANEY, WIFE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN REPLEVIN AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER /

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	BIERBACH	6380	10.00
SHERIFF HAWKINS	BIERBACH	6380	32.63

FILED
02:30pm
JUL 21 2006
LM

Sworn to Before Me This

William A. Shaw
Prothonotary/Clerk of Courts

____ Day of _____ 2006

Charles A. Hawkins
by Marilyn Hanner
Charles A. Hawkins
Sheriff

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

RALPH W. MORGAN, t/d/b/a
MORGAN'S EXCAVATING, : No. 2006-1120-CD
Plaintiff :
v. :
RICHARD L. MANEY, t/d/b/a
R. L. MANEY, :
Defendant : IN REPLEVIN

PRAECIPE FOR DISCONTINUANCE

TO THE PROTHONOTARY:

Please mark the within-captioned matter discontinued and settled without prejudice.

BIERBACH McDOWELL ZANIC

By: 

Thomas E. McDowell, Esquire
Attorney for Plaintiff
113 Fourth Street
Huntingdon, PA 16652
(814) 643-3555
Supreme Court I.D. 37235

DATED: September 8, 2006

FILED
M 11:38 am acc & Cert of
disc issued to
SEP 11 2006 Atty McDowell
UN
William A. Shaw copy to CJA
Prothonotary/Clerk of Courts

FILED

SEP 11 2006

William A. Shaw
Prothonotary/Clerk of Courts



www.bmzlaw.com

CHARLES A. BIERBACH
THOMAS E. McDOWELL
GEORGE N. ZANIC

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JAMES M. McCLURE
THOMAS K. HOOPER
RAY A. GHANER
KIMBERLY M. KITCHEN

September 8, 2006

William A. Shaw, Sr., Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Dear Mr. Shaw:

I have enclosed a Praeclipe for Discontinuance relative to the above-captioned matter. Kindly file the same and return two (2) time-stamped copies to me in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation regarding this request.

Sincerely yours,

BIERBACH McDOWELL ZANIC


Thomas E. McDowell, Esquire

Thomas E. McDowell, Esquire

TEM/slf

Enclosures

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Ralph W. Morgan
Morgan's Excavating

Vs.
Richard L. Maney
R. L. Maney

No. 2006-01120-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on September 11, 2006, marked:

Discontinued and settled without prejudice

Record costs in the sum of \$85.00 have been paid in full by Charles A. Bierbach Esq. .

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



William A. Shaw, Prothonotary