

06-1263-CD

Dana Litz vs CAM General Contracting

2006-1263-CD

Dana Litz vs CAM General

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

DANA G. LITZ

And

CAM GENERAL CONTRACTING

NO. 2006 - 1263 - CD

Filed on Behalf of Dana G. Litz

Type of Pleading:

**STIPULATION AGAINST LIENS**

Filed by:

Unlimited Real Estate Services, Inc.  
331 E. Market Street  
Clearfield, PA 16830  
814-765-6791

**FILED**

AUG 07 2006

6/2/06

William A. Shaw

Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

NO. 06--CD

**Stipulation Against Liens**

THIS AGREEMENT, made this 4th day of August, 2006, BETWEEN  
**Dana G. Litz**, of P.O. Box 1, Mineral Springs, Pennsylvania, herein referred to as Owner,

- A N D -

**CAM General Contracting**, of 913 Dorey Street, Clearfield, Clearfield County, Pennsylvania 16830, herein referred to as Contractor,

WHEREAS, DANA G. LITZ, Owner herein, is about to execute contemporaneously herewith, a contract, with CAM GENERAL CONTRACTING, Contractor herein to provide materials and/or to perform labor necessary for the construction and erection or the alteration and repair of (a) building(s) upon those certain pieces or parcels of land situated in Bradford Township, County of Clearfield and Commonwealth of Pennsylvania, bounded and described as follows:

**ALL** that certain lot or piece of ground situate in the Village of Woodland, Township of Bradford, County of Clearfield and State of Pennsylvania, the same being bounded and described as follows:

**BEGINNING** at a post corner of private alley and other lands that formerly belonged to D.C. Burkett; thence South eighty-six (86) degrees forty-five (45) minutes West one hundred and twenty-eight (128) feet to post; thence North two (2) degrees forty-five (45) minutes East three hundred and forty-two (342) feet to post; thence South eighty-five (85) degrees East one hundred and twenty-seven and eight tenths (127.8) feet to post at corner of private alley; thence along said alley South two (2) degrees forty-five (45) minutes West three hundred twenty-three and eight tenths (323.8) feet to post and place of beginning. Containing one (1) acre, more or less.

NOW, the day and date first above written, and at the time of and immediately before the execution of the principle contract, and before any authority has been given by

the said owners to the said contractor to commence work on the said building, or purchase materials for the same in consideration of the making of the said contract with owner and the further consideration of one (\$1.00) to contractor paid by owner, it is hereby agreed by and between the said parties hereto that the said contractor for themselves and their sub-contractor and all parties acting through or under them, covenant and agree that no mechanics lien or claim shall be filed or maintained by them, or any of them, against the said building and lot of ground appurtenant thereto, for or on account of any work done or materials furnished by them, or any of them, under the principle contract or otherwise for, toward, in, or about the erection and construction of the said building, and the said contractor, for themselves and their sub-contractor and others under them, hereby expressly waive and relinquish the right to have or maintain any mechanics lien or claim against the said building or the lot of ground appurtenant thereto, and that this agreement waiving the right of lien shall be an independent covenant.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals this day and date first above written.

WITNESSES:

Ja Michaels  
Ja Michaels

By Craig A. McCracken  
CRAIG A. McCRAKEN, Contractor  
DANA G. LITZ  
DANA G. LITZ, Owner

06-1264-CD

Arrowhead Sys. Vs Guisenne's Finer Food

2006-1264-CD

Arrowhead vs Guiseppe's Finer Foods et al

Prepared by, recording requested by  
and return to:

Name: Martin G. Rogers  
Company: Arrowhead Systems, Inc.  
Address: 3255 Medalist Drive  
City: Oshkosh  
State: WI Zip: 54902  
Phone: (920) 235-5562  
Fax: (920) 235-3638

2006-1264-CR

**FILED**

AUG 07 2006

12:40 (u)

William A. Shaw

Prothonotary/Clerk of Courts

2 cert Puff

1 cert to Dept

-----Above this Line for Official Use Only-----

**Claim of Lien -- Corporation**  
(Pa. Stat. Ann. tit 49, § 1503)

COMES NOW, Martin G. Rogers, as a representative of Arrowhead Systems, Inc., a Wisconsin corporation acting as a ( X ) contractor ( ) subcontractor, which has provided labor and/or materials for the alteration, repair, erection, or construction of the property located at and described as:

Guiseppie's Finer Foods  
2592 Oklahoma-Salem Road  
Du Bois, PA 15801,

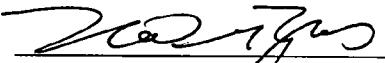
and would state as follows:

1. The above-described property is owned by or reputed to be owned by Dennis V. Raybuck, who may be reached at the following address: 2592 Oklahoma-Salem Road, Du Bois, PA 15801.
2. The undersigned ceased furnishing labor and/or materials on the 31st day of October, 2005, but its provision of labor and/or materials was never completed.
3. Labor and/or materials were provided under contracts with the property owner executed on or about the following dates, for the furnishing of the following labor and /or materials: Coolers, Depallatizers, Pushers, Pallets, Conveyors, etc.

January 13, 2005, January 26, 2005, February 10, 2005, April 8, 2005, May 18, 2005, and September 28, 2005.

4. The amount due the undersigned for said labor and/or materials is \$ 138,819.60.

Dated this 1 day of August, 2006

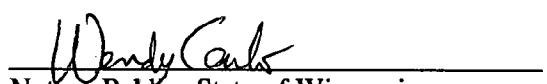


Martin G. Rogers  
Chief Financial Officer  
Arrowhead Systems. Inc.

**Acknowledgment of Individual**

STATE OF WISCONSIN  
COUNTY OF WINNEBAGO

Subscribed and sworn to before me  
this 1 day of August, 2006.



\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission Expires: 6-2-09

**Certificate of Delivery**

I, Martin G. Rogers, hereby certify that I have delivered this day a true and correct copy of the foregoing to The Clearfield County Prothonotary, 230 East Market Street, Clearfield, Pennsylvania 16830 by:

Personal Service  
 Mailing a true and correct copy of same by first class registered or certified U.S. mail, postage prepaid, return receipt requested to Arrowhead Systems, Inc., 3255 Medalist Drive, Oshkosh, Wisconsin 54902.

So certified this the \_\_\_\_\_ day of August, 2006.

\_\_\_\_\_  
Signature

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

ARROWHEAD SYSTEMS, INC.,

) NO. 2006-1264-C.D.

Claimant,

)

vs.

) TYPE OF CASE: CIVIL

DENNIS V. RAYBUCK, GIUSEPPE'S  
FINER FOODS, INC., and ICP GLOBAL  
HOLDINGS, INC.,

)

) TYPE OF PLEADING: PRELIMINARY

)

) OBJECTIONS

Respondents.

)

) Filed on behalf of Respondents,

) Dennis V. Raybuck, Giuseppe Finer Foods,  
Inc., and ICP Global Holdings, Inc.

)

) Counsel of Record for this Party:

)

) Gregory H. Teufel

) Pa. Id. No. 73062

) Sarah B. Heineman

) Pa. Id. No. 91040

) SCHNADER HARRISON SEGAL & LEWIS

) LLP

) Suite 2700, Fifth Avenue Place

) 120 Fifth Avenue

) Pittsburgh, PA 15222-3010

) (412) 577-5200 (telephone)

) (412) 765-3858 (facsimile)

)

) Christopher E. Mohney, Esquire

) Pa. Id. 63494

) 25 East Park Avenue, Suite 6

) DuBois, PA 15801

) (814) 375-1044

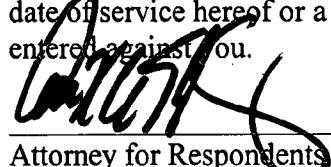
)

)

)

To Claimant: Arrowhead Systems, Inc.:

You are hereby notified to file a written response to the enclosed Preliminary Objections within twenty (20) days from the date of service hereof or a judgment may be entered against you.

  
\_\_\_\_\_  
Attorney for Respondents

FILED <sup>3cc</sup>  
OCT 13 2006  
Atty Mohney

William A. Shaw  
Prothonotary/Clerk of Courts

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

ARROWHEAD SYSTEMS, INC.  
)  
)  
Claimant,  
)  
vs.  
)  
DENNIS V. RAYBUCK, et al.,  
)  
Respondents.  
)

## **PRELIMINARY OBJECTIONS TO CLAIMANT'S MECHANICS' LIEN CLAIM**

Respondents, Dennis V. Raybuck, Giuseppe's Finer Foods, Inc., and ICP Global Holdings, Inc., through their undersigned counsel, hereby files the following Preliminary Objections to Claimant's Mechanics' Lien Claim pursuant to 49 Pa.Stat. § 1505.

1. Claimant, Arrowhead Systems Inc., filed a Mechanics' Lien Claim ("Claim") with respect to 2592 Oklahoma-Salem Road, DuBois, PA 15801, for the payment of a debt for labor and materials provided by Claimant. *See Mechanics' Lien Claim.*

2. Claimant avers that it was a contractor when it provided the labor and materials for the subject property. *See Mechanics' Lien Claim.*

3. Claimant incorrectly avers that the owner of the property is Dennis V. Raybuck. *Id.* at ¶1, but for purposes of these Preliminary Objections, it is irrelevant that the actual owner of the land at issue is JCP Global Holdings, Inc. and not Dennis V. Raybuck.

4. Claimant further avers that it ceased furnishing labor and/or materials on October, 31, 2005, however, Claimant admits that its provisions of labor and/or materials were never completed. *Id.* at ¶2.

5. "Any party may preliminarily object to a [mechanics' lien] claim upon a showing of exemption or immunity of the property from lien, or for lack of conformity with this act." 49 Pa.Stat.Ann. § 1505.

6. 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. Baal Cynwyd Hotel Associates, 592 A.2d 102 (Pa.Super. 1991).

7. The Claim should be stricken because Claimant admits it has not completed the work.

8. Under the Mechanics' Lien Act of 1963 ("Act."), claimant is required to file the claim within four months after completion of the work.

9. Claimant has not completed the work.

10. Therefore, this Claim is invalid and must be stricken.

11. 49 Pa.Stat.Ann. §1502 outlines what a claimant is required to do in order to perfect the lien. 49 Pa.Stat.Ann. §1502 provides in pertinent part:

Filing and notice of filing of claim

(a) Perfection of lien. To perfect a lien, every claimant must:

(1) file a claim with the prothonotary as provided by this act within four (4) months after **the completion of his work**; and

(emphasis added).

12. The phrase "completion of the work" is defined in 49 Pa.Stat.Ann. § 1201(8) as:

performance of the last of the labor or delivery of the last of the materials required by the terms of the claimant's contract or agreement, whichever last occurs.

13. Claimant avers that "[T]he undersigned ceased furnishing labor and/or materials on the 31<sup>st</sup> day of October, 2005, but its provision of labor and/or materials was never completed." Claim, ¶2.

14. Claimant thus admits the work was never completed.
15. Therefore, the Claim should be stricken.
16. Claimant has not adhered to the filing requirements of the Act.
17. Assuming arguendo that Claimant could proceed with its Claim even though it never finished the work, it failed to comply with the requirements for filing a Claim
18. Claimant failed to serve notice of the filing or the file the requisite affidavit of service with the Clearfield County Prothonotary.
19. 49 Pa.Stat.Ann. §1502 requires written notice of filing of a Claim and an affidavit of service that such notice was served.
20. 49 Pa.Stat.Ann. §1502 in pertinent part states:

Filing and notice of filing of claim

(a) Perfection of lien. To perfect a lien, every claimant must:

  - (1) file a claim with the prothonotary as provided by this act within four (4) months after the completion of his work; and
  - (2) serve written notice of such filing upon the owner within one month after filing, giving the court term and number and date of filing of the claim. An affidavit of service of notice, or the acceptance of service, shall be filed within twenty (20) days after service setting forth the date and manner of service. **Failure to serve such notice or to file the affidavit or acceptance of service within the times specified shall be sufficient ground for striking off the claim.**

(emphasis added).
21. Claimant has failed to serve the required notice upon the owner alleged in the claim (Dennis V. Raybuck) or upon the actual owner of the land at issue (ICP Global Holdings, Inc.), as well as failed to file an affidavit of service with the Prothonotary.

22. The Act clearly states that failure to comply with these requirements shall be sufficient grounds for striking off the claim.

23. Therefore, this claim should be stricken.

24. Claimant further failed to comply with the Act because claimant never properly served the Claim on anyone.

25. Claimant mailed notice of filing of the Claim to Giuseppe's Finer Foods, Inc. only.

26. 49 Pa.Stat.Ann. §1502(c) dictates the manner in which a claim must be served on the owner.

27. 49 Pa.Stat.Ann. §1502(c) provides:

(c) Manner of service. Service of the notice of filing of claim shall be made by an adult in the same manner as a writ of summons in assumpsit, or if service cannot be so made then by posting upon a conspicuous public part of the improvements.

28. Pennsylvania Rules of Civil Procedure 400 and 424 govern how a writ of summons in assumpsit is served.

29. Pa.R.Civ.P. 400 governs who can serve an entity in Pennsylvania.

30. Pa.R.Civ.P. 400 states:

Person to Make Service

(a) Except as provided in subdivisions (b) and (c) and in Rules 400.1 and 1930.4, original process shall be served within the Commonwealth **only by the sheriff.**

(emphasis added).

31. Whereas, Rule 424 governs who can accept service on behalf of a corporation and similar entities.

32. Pa.R.Civ.P. 424 provides:

Corporations and Similar Entities

Service of original process upon a corporation or similar entity shall be made by handing a copy to any of the following persons provided the person served is not a plaintiff in the action:

- (1) an executive officer, partner or trustee of the corporation or similar entity, or
- (2) the manager, clerk or other person for the time being in charge of any regular place of business or activity of the corporation or similar entity, or
- (3) an agent authorized by the corporation or similar entity in writing to receive service of process for it

33. Claimant did not have a sheriff serve the notice of filing of the claim on anyone.

34. Moreover, Claimant did not hand the copy of the claim to any of persons authorized by Rule 424.

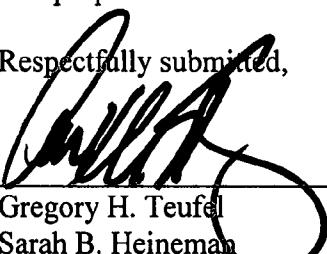
35. Therefore, Claimants failure to serve notice of filing of the Claim as required by the Act is sufficient ground for striking off the Claim.

36. Thus, the Claim should be stricken.

WHEREFORE, the Respondents respectfully request that the Court strike Claimant's Mechanics' Lien Claim for noncompliance with the Mechanics' Lien Act of 1963 and grant such other or further relief as this Court deems proper.

Respectfully submitted,

DATED: OCT. 13, 2006

  
\_\_\_\_\_  
Gregory H. Teufel  
Sarah B. Heineman  
Christopher E. Mohney

Attorneys for Respondents, Dennis V. Raybuck,  
Giuseppe's Finer Foods, Inc, and ICP Global Holdings, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Preliminary Objections to Complaint has been served upon the Claimant at the address listed below this 13<sup>th</sup> day of October, 2006 via first-class U.S. Mail:

Arrowhead Systems, Inc.  
c/o Martin G. Rogers  
3255 Medalist Drive  
Oshkosh, WI 54902

A handwritten signature in black ink, appearing to read "Martin G. Rogers", is written over a horizontal line.

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

ARROWHEAD SYSTEMS, INC,	:	
	:	
Claimant,	:	
	:	
vs.	:	NO. 2006-1264-C.D.
	:	
DENNIS V. RAYBUCK, GIUSEPPE'S	:	
FINER FOODS, INC. and ICP GLOBAL	:	
HOLDINGS, INC.	:	
	:	
Respondents	:	

**SCHEDULING ORDER**

AND NOW, this 4<sup>th</sup> day of Dec, 2006, upon consideration of Respondents' Preliminary Objections, it is hereby ORDERED that a hearing is scheduled for the 3<sup>rd</sup> day of January, 2007 at 10 o'clock A.M. in Courtroom # 1 of the Court of Common Pleas of Clearfield County, Pennsylvania.

BY THE COURT:

BY THE COURT:

John H. Dunn

**FILED** 3cc  
01/29/06 Atty Mohney  
DEC 05 2006 (GW)

William A. Shaw  
Prothonotary/Clerk of Courts

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

ARROWHEAD SYSTEMS, INC. : NO. 2006-1264-C.D.  
Claimant, :  
vs. : Type of Pleading:  
DENNIS V. RAYBUCK, GIUSEPPE'S : CERTIFICATE OF SERVICE  
FINER FOODS, INC. and ICP GLOBAL :  
HOLDINGS, INC. : Filed on Behalf of:  
Respondents. : DEFENDANTS  
: Counsel of Record:  
: CHRISTOPHER E. MOHNEY, ESQUIRE  
: Supreme Court No.: 63494  
: 25 EAST PARK AVENUE  
: SUITE 6  
: DUBOIS, PA 15801  
: (814) 375-1044

FILED  
M 11/17/2006  
DEC 08 2006 UN  
cc

William A. Shaw  
Prothonotary/Clerk of Courts

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

ARROWHEAD SYSTEMS, INC. :  
Claimant, :  
:  
vs. :  
: NO. 2006-1264-C.D.  
DENNIS V. RAYBUCK, GIUSEPPE'S :  
FINER FOODS, INC. and ICP GLOBAL :  
HOLDINGS, INC. :  
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Respondents. :  
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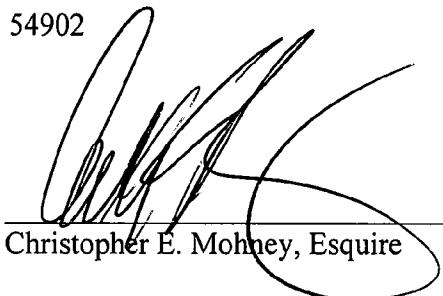
**CERTIFICATE OF SERVICE**

I, CHRISTOPHER E. MOHNEY, ESQUIRE, co-counsel of record for Respondents, do hereby certify that on the 6<sup>th</sup> day of December, 2006, I did cause to be served certified true and correct copy of Scheduling Order for Respondent's Preliminary Objections on the following individuals, by first class United States mail, postage pre-paid:

Arrowhead Systems, Inc.  
c/o Martin G. Rogers  
3255 Medalist Drive  
Oshkosh, WI 54902

BY:

Christopher E. Mohney, Esquire



UR

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

ARROWHEAD SYSTEMS, INC. :

-vs-

... No. 06-1264-CD

DENNIS V. RAYBUCK,  
GIUSEPPE'S FINER FOODS,  
INC., AND ICP GLOBAL  
HOLDINGS, INC.

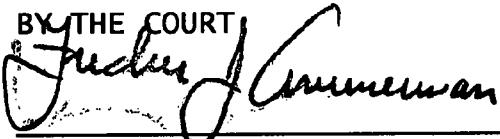
O R D E R

AND NOW, this 3th day of January, 2007, this  
being the date set for argument on the Preliminary  
Objections to Plaintiff's Mechanic's Lien Claim; the Court  
notes that the Preliminary Objections were filed by the  
Respondents and that it would appear appropriate service  
was made on the Claimant, Arrowhead Systems, Inc.; the  
Court believing from a review of the documents that the  
Claimant has failed to provide appropriate notice and  
service of the claim under 49 Pa.C.S.A. Section 1502 and  
other relevant rules and statutes; therefore, it is the  
ORDER of this Court that the Preliminary Objections be and  
are hereby granted and the mechanic's lien be and is hereby  
dismissed.

**FILED**

01/10/07 02:32 PM ICCPLF:  
JAN 05 2007 3255 Medalist Drive  
WI 54902  
William A. Shaw  
Prothonotary/Clerk of Courts

JCC Atty Mohney

BY THE COURT  
  
\_\_\_\_\_  
President Judge



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

ARROWHEAD SYSTEMS, INC. )  
 )  
 Claimant, )  
 )  
 vs. )  
 )  
 DENNIS V. RAYBUCK, et al., )  
 )  
 Respondents. )

**RESPONDENTS' BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO  
CLAIMANT'S MECHANICS' LIEN**

Respondents, Dennis V. Raybuck, Giuseppe's Finer Foods, Inc., and ICP Global Holdings, Inc., through their undersigned counsel, hereby files their brief in support of their Preliminary Objections to Claimant's Mechanics' Lien Claim pursuant to 49 Pa.Stat. § 1505.

**I. Relevant Facts.**

Claimant, Arrowhead Systems Inc., filed a Mechanics' Lien Claim ("Claim") with respect to 2592 Oklahoma-Salem Road, DuBois, PA 15801, for the payment of a debt for labor and materials provided by Claimant. *See Mechanics' Lien Claim.* Claimant avers that it was a contractor when it provided the labor and materials for the subject property. *See Mechanics' Lien Claim.* Claimant incorrectly avers that the owner of the property is Dennis V. Raybuck. *Id.* at ¶1, but for purposes of these Preliminary Objections, it is irrelevant that the actual owner of the land at issue is ICP Global Holdings, Inc. and not Dennis V. Raybuck. Claimant further avers that it ceased furnishing labor and/or materials on October, 31, 2005, however, Claimant admits that its provisions of labor and/or materials were never completed. *Id.* at ¶2.

## **II. Argument**

“Any party may preliminarily object to a [mechanics’ lien] claim upon a showing of exemption or immunity of the property from lien, or for lack of conformity with this act.” 49 Pa.Stat.Ann. § 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. Baal Cynwyd Hotel Associates, 592 A.2d 102 (Pa.Super. 1991).

### **A. The Claim should be stricken because Claimant admits it has not completed the work.**

Under the Mechanics’ Lien Act of 1963 (“Act.”), claimant is required to file the claim within four months after completion of the work. Claimant has not completed the work. Therefore, this Claim is invalid and must be stricken.

49 Pa.Stat.Ann. §1502 outlines what a claimant is required to do in order to perfect the lien. 49 Pa.Stat.Ann. §1502 provides in pertinent part:

Filing and notice of filing of claim

(a) Perfection of lien. To perfect a lien, every claimant must:

- (1) file a claim with the prothonotary as provided by this act within four
- (4) months after **the completion of his work**; and

(emphasis added).

The phrase "completion of the work" is defined in 49 Pa.Stat.Ann. § 1201(8) as:

performance of the last of the labor or delivery of the last of the materials required by the terms of the claimant's contract or agreement, whichever last occurs.

Claimant avers that “[T]he undersigned ceased furnishing labor and/or materials on the 31<sup>st</sup> day of October, 2005, but its provision of labor and/or materials was never completed.” Arrowhead Claim, ¶2. Claimant thus admits the work was never completed. Therefore, the Claim should be stricken.

In the factually similar case of Phila. Cons. Serv. LLC. v. Domb, 903 A.2d 1262 (Pa.Super. 2006), the Superior Court held that a subcontractor who averred in his claim that the work was not completed, failed to properly perfect his claim under 49 Pa.Stat.Ann. §1502(a) because the subcontractor had not completed the work required under the contract. The court reasoned that mechanics' liens take effect sooner and assume priority over other liens and, hence, these liens provide a remedy which is more expeditious and advantageous to the subcontractor or contractor when compared to a breach of contract judgment. Id. at 1267. Therefore, the court concluded that if a subcontractor or contractor wants to take advantage of this extraordinary remedy, the claimant must comply with the statute as the legislature intended. Id. The court concluded that, “[i]f a subcontractor wishes to walk off the job prior to ‘completion of the work’ because he thinks there is a breach of contract, the subcontractor is afforded the remedy of pursuing a breach of contract claim.” Id. at 1267.

**B. Claimant has not adhered to the service and filing requirements of the Act.**

Assuming arguendo that Claimant may proceed with its Claim even though it never finished the work, it failed to comply with the requirements for filing a Claim

**1. Claimant failed to serve notice of the filing of the Claim or to file the requisite affidavit of service with the Clearfield County Prothonotary.**

49 Pa.Stat.Ann. §1502 also requires written notice of filing of a Claim and an affidavit of service of such notice. 49 Pa.Stat.Ann. §1502 in pertinent part states:

Filing and notice of filing of claim

(a) Perfection of lien. To perfect a lien, every claimant must:

(1) file a claim with the prothonotary as provided by this act within four (4) months after the completion of his work; and

(2) serve written notice of such filing upon the owner within one month after filing, giving the court term and number and date of

filings of the claim. An affidavit of service of notice, or the acceptance of service, shall be filed within twenty (20) days after service setting forth the date and manner of service. **Failure to serve such notice or to file the affidavit or acceptance of service within the times specified shall be sufficient ground for striking off the claim.**

(emphasis added).

Claimant has failed to serve the required notice upon the person alleged to be the owner in the Claim (Dennis V. Raybuck) or upon the actual owner of the land at issue (ICP Global Holdings, Inc.), as well as failed to file an affidavit of service with the Prothonotary. The Act clearly states that failure to comply with these requirements shall be sufficient grounds for striking off the claim. Therefore, the Claim should be stricken.

**2. Claimant failed to comply with the Act because Claimant never properly served the Claim on anyone.**

Claimant further failed to comply with the Act because claimant never properly served the Claim on anyone. Claimant mailed notice of filing of the Claim to Giuseppe's Finer Foods, Inc. only. 49 Pa.Stat.Ann. §1502(c) dictates the manner in which a claim must be served on the owner. 49 Pa.Stat.Ann. §1502(c) provides as follows:

(c) Manner of service. Service of the notice of filing of claim shall be made by an adult in the same manner as a writ of summons in assumpsit, or if service cannot be so made then by posting upon a conspicuous public part of the improvements.

Pennsylvania Rules of Civil Procedure 400 and 424 govern how a writ of summons in assumpsit is served. Pa.R.Civ.P. 400 governs who can serve an entity in Pennsylvania. Pa.R.Civ.P. 400 states:

**Person to Make Service**

(a) Except as provided in subdivisions (b) and (c) and in Rules 400.1 and 1930.4, original process shall be served within the Commonwealth **only by the sheriff.**

(emphasis added).

Whereas, Rule 424 governs who can accept service on behalf of a corporation and similar entities. Pa.R.Civ.P. 424 provides:

**Corporations and Similar Entities**

Service of original process upon a corporation or similar entity shall be made by handing a copy to any of the following persons provided the person served is not a plaintiff in the action:

- (1) an executive officer, partner or trustee of the corporation or similar entity, or
- (2) the manager, clerk or other person for the time being in charge of any regular place of business or activity of the corporation or similar entity, or
- (3) an agent authorized by the corporation or similar entity in writing to receive service of process for it

Claimant did not have a sheriff serve the notice of filing of the claim on anyone.

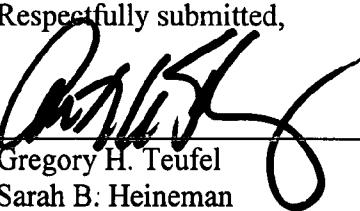
Moreover, Claimant did not hand the copy of the claim to any of persons authorized by Rule 424. Therefore, Claimant's failure to serve notice of filing of the Claim as required by the Act is sufficient ground for striking off the Claim. Thus, the Claim should be stricken.

**III. Conclusion**

For the foregoing reasons, the Respondents respectfully request that the Court strike Claimant's Mechanics' Lien Claim for noncompliance with the Mechanics' Lien Act of 1963.

Respectfully submitted,

DATED: OCT 13, 2006



\_\_\_\_\_  
Gregory H. Teufel  
Sarah B. Heineman  
Christopher E. Mohney

Attorneys for Respondents, Dennis V. Raybuck,  
Giuseppe's Finer Foods, Inc, and ICP Global Holdings, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Brief in Support of Preliminary Objections has been served upon the Claimant at the address listed below this 13<sup>th</sup> day of October, 2006 via first-class U.S. Mail:

Arrowhead Systems, Inc.  
c/o Martin G. Rogers  
3255 Medalist Drive  
Oshkosh, WI 54902



Form 668 (Y)(c)  
(Rev. February 2004)

## Notice of Federal Tax Lien

For Optional Use by Recording Office

Area:  
SMALL BUSINESS/SELF EMPLOYED AREA #2  
Lien Unit Phone: (800) 829-3903

Serial Number

305489906

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer KEVIN D &amp; ELLEN L FERRA

Residence 361 TREASURE LAKE  
DU BOIS, PA 15801-9008

**IMPORTANT RELEASE INFORMATION:** For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/2001	XXX-XX-8231	08/22/2005	09/21/2015	12896.91
1040	12/31/2002	XXX-XX-8231	08/01/2005	08/31/2015	13138.59

06-1265-CD

**FILED** ICC P1F  
 M/3:40pm PD \$25.00 PHZ  
 AUG - 7 2008

William A. Shaw  
Prothonotary

06-1265-CD  
IRS vs Kevin & Ellen Ferra

2006-1265-CD  
IRS vs Kevin Ferra et al

४०२५१-३०

FILED

AUG - 7 2006

William A. Shaw  
Prothonotary

W-13835

1960-61 BLOOMING  
1960-61 BLOOMING  
1961-62 BLOOMING

在1950年，中國人民解放軍在抗美援朝戰爭中擊落了幾架美國飛機。

L5841 7-2 5

ENR-292 (C)

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Form 668 (Z)  
(Rev. 10-2000)

11883

Department of the Treasury - Internal Revenue Service  
**Certificate of Release of Federal Tax Lien**

Area: SMALL BUSINESS/SELF EMPLOYED AREA #2 Lien Unit Phone: (800) 913-6050	Serial Number 305489906	For Use by Recording Office
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I certify that the following-named taxpayer, under the requirements of section 6325 (a) of the Internal Revenue Code has satisfied the taxes listed below and all statutory additions. Therefore, the lien provided by Code section 6321 for these taxes and additions has been released. The proper officer in the office where the notice of internal revenue tax lien was filed on August 07

2006, is authorized to note the books to show the release of this lien for these taxes and additions.

Name of Taxpayer  
KEVIN D & ELLEN L FERRA

Residence 361 TREASURE LAKE  
DU BOIS, PA 15801-9008

COURT RECORDING INFORMATION:  
Liber Page UCC No. Serial No.  
n/a n/a n/a 06-1265-CD

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/2001	XXX-XX-8231	08/22/2005	09/21/2015	12896.91
1040	12/31/2002	XXX-XX-8231	08/01/2005	08/31/2015	13138.59
*****	*****	*****	*****	*****	*****

Place of Filing  Clearfield Prothonotary Clearfield County Clearfield, PA 16830	Total \$ 26035.50
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This notice was prepared and signed at DETROIT, MI, on this,

the 28th day of July, 2010.

Signature <u>R. A. Mitchell</u>	Title Director, Campus Compliance Operations
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(NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Certificate of Release of Federal Tax lien Rev. Rul. 71-466, 1971 - 2 C.B. 409)