

06-1394-CD
Certified Builders vs John Gray et al

Certified Builders vs John Gray et al
2006-1394-CD

06-

139400

David R Thompson

Brian Grubell

John Gray isalt Mac
Gray Contracting and
Tanning Gray

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Certified Builders
(Plaintiff)

CIVIL ACTION

1212 WALTON ST.
(Street Address)

No. 2006-1394-CD

Philipsburg PA 16866
(City, State ZIP)

Type of Case: _____

Type of Pleading: _____

vs.

John Gray / Gray Contract
(Defendant)

Filed on Behalf of:

(Plaintiff/Defendant)

852 A. Glennwood Dr.
(Street Address)

Altoona PA 16602
(City, State ZIP)

FILED

AUG 25 2006
013:15(W)

William A. Shaw
Prothonotary/Clerk of Courts
CERT COPIES TO

Brian H. Grabski, ESG +
(Filed by) on behalf of Def. Atty, PFF.
mos. Russina

3621 Burgoon Rd Alto PA 16602
(Address)

(814) 944-5090
(Phone)

B. H. Grabski
(Signature)

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS

Judicial District, County Of
CLEARFIELD

NOTICE OF APPEAL

FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. 2006-1394-CD

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case referenced below.

NAME OF APPELLANT <u>Gray Contracting / John Gray, et al</u>	MAG. DIST. NO. <u>46-3-03</u>	NAME OF D.J. <u>Michael A. Rudella</u>
ADDRESS OF APPELLANT <u>852 A. Glennwood Drive</u>	CITY <u>Altoona</u>	STATE <u>PA</u>
DATE OF JUDGMENT <u>8-8-06</u>	IN THE CASE OF (Plaintiff) <u>CERTIFIED Builders</u>	Defendant <u>Gray Contracting / John Gray, et al.</u>
DOCKET No. <u>CV-295-06</u>	SIGNATURE OF APPELLANT OR ATTORNEY OR AGENT <u>B. K. Hall, Attorney for Appellant</u>	
<p>This block will be signed ONLY when this notation is required under Pa. R.C.P.D.J. No. 1008B. This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.</p> <p><i>(Signature of Prothonotary or Deputy)</i></p> <p>If appellant was Claimant (see Pa. R.C.P.D.J. No. 1001(6) in action before a District Justice, A COMPLAINT MUST BE FILED within twenty (20) days after filing the NOTICE of APPEAL.</p>		

PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa.R.C.P.D.J. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

PRAECIPE: To Prothonotary

Enter rule upon CERTIFIED Builders appellee(s), to file a complaint in this appeal
(Name of appellee(s))

(Common Pleas No. 2006-1394-CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

RULE: To CERTIFIED BUILDERS, appellee(s)
(Name of appellee(s))

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS MAY BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of the mailing.

Date: 8-25 2006

C. Hall
Signature of Prothonotary or Deputy

YOU MUST INCLUDE A COPY OF THE NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH THIS NOTICE OF APPEAL.

FILED

AUG 25 2006

AOPC 312-02

COURT FILE TO BE FILED WITH PROTHONOTARY

William A. Shaw
Prothonotary/Clerk of Courts

PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing of the notice of appeal. Check applicable boxes.)

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF _____; ss

AFFIDAVIT: I hereby (swear) (affirm) that I served

a copy of the Notice of Appeal, Common Pleas No. _____, upon the District Justice designated therein on
(date of service) _____, 20_____, by personal service by (certified) (registered) mail,
sender's receipt attached hereto, and upon the appellee, (name) _____, on
_____, 20_____, by personal service by (certified) (registered) mail,
sender's receipt attached hereto.

(SWORN) (AFFIRMED) AND SUBSCRIBED BEFORE ME
THIS _____ DAY OF _____, 20_____

Signature of affiant

Signature of official before whom affidavit was made

Title of official

My commission expires on _____, 20_____

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS

Judicial District, County Of
CLEARFIELD

NOTICE OF APPEAL

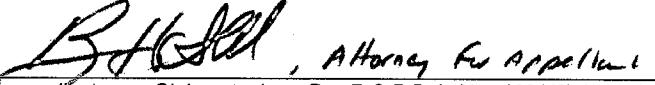
FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. 2006-1394-CD

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case referenced below.

NAME OF APPELLANT GRAY CONTRACTING / John Gray, et al	MAG. DIST. NO. 46-3-0300 (XMA-Attned - An Rudella	NAME OF D.J. PA 16602
ADDRESS OF APPELLANT 852 A. Glennwood Dr. ve	CITY Altura	STATE PA
DATE OF JUDGMENT 8-8-06	IN THE CASE OF (Plaintiff) CERTIFIED Builders	ZIP CODE 16602
DOCKET No. CV-295-06	vs Gray Contracting / John Gray, et al	
SIGNATURE OF APPELLANT OR ATTORNEY OR AGENT 		
<p>This block will be signed ONLY when this notation is required under Pa. R.C.P.D.J. No. 1008B.</p> <p>This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.</p> <p><i>Signature of Prothonotary or Deputy</i></p>		
<p>If appellant was Claimant (see Pa. R.C.P.D.J. No. 1001(6) in action before a District Justice, A COMPLAINT MUST BE FILED within twenty (20) days after filing the NOTICE of APPEAL.</p>		

PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa.R.C.P.D.J. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

PRAECIPE: To Prothonotary

Enter rule upon CERTIFIED Builders 01/31/07
 Name of appellee(s) CERTIFIED BUILDERS

(Common Pleas No. 2006-1394-CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

RULE: To CERTIFIED BUILDERS, appellee(s)
 Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS MAY BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of the mailing.

Date: 8-25, 2006


 Signature of Prothonotary or Deputy

YOU MUST INCLUDE A COPY OF THE NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH THIS NOTICE OF APPEAL.

PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing of the notice of appeal. Check applicable boxes.)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF _____; ss

AFFIDAVIT: I hereby (swear) (affirm) that I served

a copy of the Notice of Appeal, Common Pleas No. _____, upon the District Justice designated therein on
(date of service) _____, 20_____. by personal service by (certified) (registered) mail,
sender's receipt attached hereto, and upon the appellee, (name) _____, on
_____, 20_____. by personal service by (certified) (registered) mail,
sender's receipt attached hereto.

(SWORN) (AFFIRMED) AND SUBSCRIBED BEFORE ME
THIS _____ DAY OF _____, 20_____

Signature of affiant

Signature of official before whom affidavit was made

Title of official

My commission expires on _____, 20_____

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-03

MDJ Name: Hon.

MICHAEL A. RUDELLA

Address: **131 ROLLING STONE ROAD
PO BOX 210
KYLERTOWN, PA**

Telephone: **(814) 345-6789** **16847-0444**

**GRAY CONTRACTING/ JOHN GRAY
852 A. GLENNWOOD DR
ALTOONA, PA 16602**

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF:

**CERTIFIED BUILDERS
1212 WALTON ST
PHILIPSBURG, PA 16866**

NAME and ADDRESS

DEFENDANT:

**GRAY CONTRACTING/ JOHN GRAY, ET AL.
852 A. GLENNWOOD DR
ALTOONA, PA 16602**

NAME and ADDRESS

Docket No.: **CV-0000295-06**
Date Filed: **6/16/06**



THIS IS TO NOTIFY YOU THAT:

Judgment: **FOR PLAINTIFF**

(Date of Judgment) **8/08/06**

<input checked="" type="checkbox"/> Judgment was entered for: (Name) CERTIFIED BUILDERS	<table border="1"><tr><td>Amount of Judgment</td><td>\$ 4,209.68</td></tr><tr><td>Judgment Costs</td><td>\$ 119.50</td></tr><tr><td>Interest on Judgment</td><td>\$.00</td></tr><tr><td>Attorney Fees</td><td>\$.00</td></tr><tr><td>Total</td><td>\$ 4,329.18</td></tr><tr><td>Post Judgment Credits</td><td>\$ _____</td></tr><tr><td>Post Judgment Costs</td><td>\$ _____</td></tr><tr><td colspan="2">Certified Judgment Total \$ _____</td></tr></table>	Amount of Judgment	\$ 4,209.68	Judgment Costs	\$ 119.50	Interest on Judgment	\$.00	Attorney Fees	\$.00	Total	\$ 4,329.18	Post Judgment Credits	\$ _____	Post Judgment Costs	\$ _____	Certified Judgment Total \$ _____	
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<input checked="" type="checkbox"/> Judgment was entered against: (Name) GRAY CONTRACTING/ JOHN GRAY in the amount of \$ 4,329.18																	
<input type="checkbox"/> Defendants are jointly and severally liable.	Amount of Judgment																
<input type="checkbox"/> Damages will be assessed on Date & Time _____	Judgment Costs																
<input type="checkbox"/> This case dismissed without prejudice.	Interest on Judgment																
<input type="checkbox"/> Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127 \$ _____	Attorney Fees																
<input type="checkbox"/> Portion of Judgment for physical damages arising out of residential lease \$ _____	Total																

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR MAGISTERIAL DISTRICT JUDGES, IF THE JUDGEMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE MAGISTERIAL DISTRICT JUDGE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE MAGISTERIAL DISTRICT JUDGE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

8-8-06 Date *M. A. RudeLLA*

, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

Date _____, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

AOPC 315-06

DATE PRINTED: **8/08/06** **4:23:00 PM**

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-03

MDJ Name: Hon.

MICHAEL A. RUDELLA

Address: **131 ROLLING STONE ROAD
PO BOX 210
KYLERTOWN, PA**

Telephone: **(814) 345-6789**

16847-0444

**MICHAEL A. RUDELLA
131 ROLLING STONE ROAD
PO BOX 210
KYLERTOWN, PA 16847-0444**

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF:

CERTIFIED BUILDERS

**1212 WALTON ST
PHILIPSBURG, PA 16866**

NAME and ADDRESS

VS.

DEFENDANT:

**GRAY CONTRACTING/ JOHN GRAY, ET AL.
852 A. GLENNWOOD DR
ALTOONA, PA 16602**

NAME and ADDRESS

2006-1394-CD

Docket No.: **CV-0000295-06**
Date Filed: **6/16/06**



THIS IS TO NOTIFY YOU THAT:

Judgment: **FOR PLAINTIFF**

(Date of Judgment) **8/08/06**

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FILED

AUG 30 2006

6/2/06

William A. Shaw
Prothonotary/Clerk of Courts

, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

8/8/06 Date

M A Rudella

, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

AOPC 315-06

DATE PRINTED: **8/08/06** 4:25:00 PM

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-03

MDJ Name: Hon.

MICHAEL A. RUDELLA
Address: **131 ROLLING STONE ROAD**
PO BOX 210
KYLERTOWN, PA
Telephone: **(814) 345-6789**

16847-0444

MICHAEL A. RUDELLA
131 ROLLING STONE ROAD
PO BOX 210
KYLERTOWN, PA 16847-0444

THIS IS TO NOTIFY YOU THAT:

Judgment: **FOR PLAINTIFF**

(Date of Judgment) **8/08/06**

Judgment was entered for: (Name) **CERTIFIED BUILDERS**

Judgment was entered against: (Name) **GRAY CONTRACTING/ JOHN GRAY**
in the amount of \$ **4,329.18**

Defendants are jointly and severally liable.

Damages will be assessed on Date & Time _____

This case dismissed without prejudice.

Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127
\$ _____

Portion of Judgment for physical damages arising out of
residential lease \$ _____

Amount of Judgment	\$ 4,209.68
Judgment Costs	\$ 119.50
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 4,329.18
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total \$ _____	

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8-8-06 Date M. A. Rudella, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

8/08/06 Date M. A. Rudella, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

AOPC 315-06

DATE PRINTED: **8/08/06** 4:23:00 PM

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

CERTIFIED BUILDERS WHOLESALE,

Plaintiff

vs.

JOHN GRAY i/a/t/d/b/a GRAY
CONTRACTING, and TAMMY GRAY,

Defendant

* No. 06-1394-CD

* TYPE OF CASE:
* Civil Matter

* TYPE OF PLEADING:
* Complaint

* FILED ON BEHALF OF:
* Plaintiff

* COUNSEL OF RECORD FOR THIS
* PARTY:
* David R. Thompson, Esquire
* Supreme Court I.D. 73053
* THOMPSON LAW OFFICE
* P. O. Box 587
* Philipsburg, PA 16866
* (814) 342-4100

FILED *JCC*
094586 *Atty*
OCT 02 2006
W

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

CERTIFIED BUILDERS WHOLESALE,	*
	*
	No. 00-291-CD
Plaintiff	*
	*
	*
vs.	*
	*
	*
JOHN GRAY i/a/t/d/b/a GRAY	*
CONTRACTING, and TAMMY GRAY,	*
	*
	*
Defendant	*

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 against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-3641



David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

CERTIFIED BUILDERS WHOLESALE,
INC.,

Plaintiff

*
*
* No. 06-1394-CD
*
*

vs.

JOHN GRAY, i/a/t/d/b/a GRAY
CONTRACTING, and TAMMY GRAY

Defendants

*
*
*
*
*

COMPLAINT

AND NOW, comes the Plaintiff, by and through its Attorney, David R. Thompson, files this Complaint against the Defendants of which the following are averments of fact:

1. Plaintiff **CERTIFIED BUILDERS WHOLESALE, INC.**, is a Pennsylvania Corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with an office and place of business at 1212 Walton Street, Clearfield County, Philipsburg, Pennsylvania, 16866.
2. Defendants, **JOHN GRAY** i/a/t/d/b/a **GRAY CONTRACTING**, and **TAMMY GRAY** have a mailing address of 852A Glennwood Drive, Altoona, Pennsylvania, 16602.
3. At all times material hereto Plaintiff was engaged in the operation of a wholesale building supply store at 1212 Walton Street, Philipsburg, Pennsylvania, 16866.

4. Defendant purchased building materials from the Plaintiff for use in its trade, business or occupation of being a General Building Contractor, and charged said purchases to the account of **JOHN GRAY** and **TAMMY GRAY**, for **GRAY CONTRACTING**.

5. By way of further pleading, on or about May 26, 2006, Defendant contacted Plaintiff by telephone and ordered custom windows totaling \$3,367.74. (A true and correct copy of the order taken is attached hereto and made a part hereof as Exhibit "A").

6. Defendant **JOHN GRAY** has conducted business with Plaintiff for a number of years and has predominantly placed orders by telephone.

7. Upon placing the order for the windows, Plaintiff provided Defendants a confirmation of the window order, and Defendants did not change the said order placed.

8. Plaintiff notified Defendant **JOHN GRAY** upon its receipt of the special order windows.

9. Defendant has failed and refused and continues to fail and refuse to pick up his order and pay the balance of the account due despite Plaintiff's repeated requests to do so.

10. Plaintiff is unable to sell these windows otherwise, as they are custom made and were ordered special size by the Defendant.

11. The full balance remains due the Plaintiff by the Defendants in the total amount of \$3,367.74.

12. The Defendants executed a Credit Agreement with Plaintiff that established the terms of Defendants' purchase of items from Plaintiff on credit. (A true and correct

copy of the Credit Agreement is attached hereto and marked as Exhibit "B").

13. The interest on this account pursuant to the Credit Agreement has continued to accrue to the principal in the amount of 1.5% per month from July 2, 2006.

COUNT I - BREACH OF CONTRACT

CERTIFIED BUILDERS WHOLESALE, INC.
VS.
JOHN GRAY i/a/t/d/b/a GRAY CONTRACTING and TAMMY GRAY

Paragraphs 1 through 13 are incorporated by reference as though the same were set forth at length therein.

14. Defendant ordered custom-made goods from Plaintiff on credit in the amount of \$3,367.74.

15. Plaintiff has requested on numerous occasions that Defendant pick up his order and pay said contractual amount, but Defendant has failed and refused and continues to fail and refuse to pick up the order and pay said amount in full pursuant to their oral contract.

16. Defendant has failed to pay the balance of \$3,367.74, despite having ordered the custom goods from the Plaintiff.

17. Defendant is in breach of a contract as the balance of \$3,367.44, remains due and owed the Plaintiff.

18. Pursuant to the Credit Agreement and the Order form, Plaintiff is entitled to

interest added to the principal in the amount of 1.5% per month beginning July 2, 2006.

19. The Plaintiffs have had to hire legal counsel to assist them in the prosecution of this action, and is paying said counsel at the rate of \$100.00 per hour. Plaintiff prays for an award of counsel fees in the amount of twenty (20%) of the amount owed pursuant to the Credit Agreement and Order form, or in this Court's discretion, as shall be determined by a hearing.

WHEREFORE, Plaintiff demands judgment to be entered in its favor and against the Defendants, jointly and severally, in the amount of \$3,367.74 together with interest at the rate of eighteen (18%) percent per annum ongoing, costs of suit and attorney's fees.

Respectfully submitted,



David R. Thompson, Esquire
Attorney for Plaintiff

VERIFICATION

Plaintiff verifies that the statements made in this Complaint are true and correct to the best of its knowledge, information and belief. Plaintiff understands that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

CERTIFIED BUILDERS WHOLESALE, INC.

By: 

Packed 9/1

CERTIFIED BUILDERS WHOLESALE, INC.

1212 Walton Street, Phillipsburg, PA 16866 (814) 342-6540 FAX- (814) 342-4417



APPLICATION FOR CREDIT

G

Date: 4/17/97Company Name: John Gray ContractingAddress: 521 Good St Phone: 378-8019City: Houtsdale State: Pa Zip: 16651

BUSINESS TYPE:



Sole Proprietorship



Partnership



Corporation in state of _____

Social Security Number 197-50-3471 NO. of years in business 5 yrsIndividual responsible for payment: (Owner) John A Gray

Owner(s) or Officers

Title

Address

Phone

John GrayOwner521 Good St Houtsdale 378-8019Jimmy Gray

REFERENCES

Name: ChastersSH 97
FOXName: John GraySH 97Address: Phillipsburg, PaAddress: CambriaPhone: 342Phone: 236-0220Name: Jack Brown Wholesale

2 years

Address: Johnstown, Pa

Net 30m

Phone: 812-452-0

High 3000.00

Jack Brown

Pays on time.

Bank: Mid-State (Houtsdale)Bank: U.S. BankCity & Phone: ColpontCity & Phone: ColpontBank Officer: Johnstown, Pa.Bank Officer: Johnstown, Pa.

OFFICE USE ONLY:

Credit checked on: _____ Checked by: _____ Credit Approved on: _____ Sent Letter on: _____

Parties hereby agree that all purchases made is subject to the following terms and conditions:

1. The undersigned purchaser hereby agrees that all amounts due for goods and services purchased from Certified Builders Wholesale, Inc. are payable at 1212 Walton St., Philipsburg, P. A. 16866.
2. The undersigned purchaser hereby agrees to pay services charges on accounts over 30 days old. These service charges will accrue at the rate of 1 1/2% per month (18% per A.P.R.).
3. The undersigned purchaser agrees to pay, in the event his account becomes delinquent and is turned over to any attorney for collection, reasonable attorney's fees plus all court and attendant collection costs.
4. The parties hereby acknowledge that the goods and/or services purchased from Certified Builders Wholesale, Inc. are not payable in installments, but are payable in full as stated herein.

The above information is complete and accurate to the best of my knowledge and I agree to the above terms and conditions.

PERSONAL GUARANTEE OF AN ACCOUNT

For valuable consideration, the receipt whereof is hereby acknowledge and to induce any of the above entities, subsidiaries branches and divisions now existing or hereafter created and their successors and assigns (hereafter collectively referred to as the "Seller"), at any time or from time to time to make advances or loans or otherwise to give credit to _____

John Gray Contracting
and its subsidiaries, parent, affiliates branches, divisions now existing or hereafter created and their successors and assigns (hereafter collectively referred to as the "Buyer"), the undersigned individually and if plural, jointly and severally, hereby personally and unconditionally guarantee(s) the payment of any kind and all bills for merchandise to be sold by the Seller to the said Buyer.

This is a continuing guarantee and shall cover and apply to all transactions entered into by the Buyer prior to termination of this guarantee by any of the undersigned as provided below but no such termination shall affect any obligations of any of the undersigned pursuant to this guarantee existing at the time of such termination and any termination by one of the undersigned shall not affect the continuing obligations hereunder of such of the undersigned as do not give such notice of termination.

The undersigned expressly agrees that this guarantee shall be in no way affected by any extensions of time to make payment and/or the acceptance by the seller of bills, checks and other instruments for payment of money and/or extensions or renewals thereof. Each of the undersigned hereby waives any and all surety ship defenses and defenses in the nature thereof and agrees that the Seller may deal with the Buyer in such manner as the Seller may determine and without in any way affecting the liability hereunder of any of the undersigned. In addition, if the Buyer is unable to pay for the merchandise sold to it by the Seller, the Seller may bring immediate suit on this guarantee against the guarantor or guarantors without exhausting its remedies against the Buyer and without first giving notice of the Buyers failure to pay.

In the event of bankruptcy, the filing of a Proof of Claim shall not prejudice the rights of the Seller to proceed under the terms of this guarantee. In the event that any claim arising from the sale of merchandise is referred by the Seller to an independent attorney or collection agency, then the guarantor or guarantor's agree that in addition to any amounts owed, that they will pay as a collection fee, 33 1/3% of the amount due and owing, which the said guarantor agrees is reasonable.

The undersigned may at any time terminate this guarantee by giving 10 days notice in writing to the Seller By Registered Mail sent to the Sellers office whereupon liability of the undersigned shall terminate as to the deliveries made subsequent to the expiration of said 10 day period. It shall nevertheless continue in full force as to all deliveries made at any time prior to the expiration of said 10 day period.

It is further agreed that this guarantee shall continue notwithstanding any change in organization, corporate setup of partnership change unless the Seller receives notice of such change at least (5) days prior to the delivery of any merchandise and that this guarantee shall be binding upon the heirs, personal representatives, estates, successors and assigns of each of the undersigned.

Date: 5-9-97

Owner: John Gray Spouse: Jeanne May

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

CERTIFIED BUILDERS WHOLESALE,

Plaintiff

VS.

JOHN GRAY i/a/t/d/b/a GRAY
CONTRACTING, and TAMMY GRAY,

Defendant

No. 06-1394-CD

TYPE OF CASE:
Civil Division - Law

TYPE OF PLEADING:
Certificate of Service

FILED ON BEHALF OF:
Defendants

COUNSEL OF RECORD FOR
THIS PARTY:
David R. Thompson, Esquire
Attorney at Law
Supreme Court 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

FILED

0710:42(61)
OCT 03 2006

CC
Amy Thompson

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

CERTIFIED BUILDERS WHOLESALE,

*
* No. 1394

Plaintiff

vs.

JOHN GRAY i/a/t/d/b/a GRAY
CONTRACTING, and TAMMY GRAY,

Defendant

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CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I served a true and correct copy of the COMPLAINT, in the above captioned matter by depositing the same in the U.S. First Class Mail, postage prepaid, addressed as follows:

Brian H. Grabill, Esquire
GRABILL & GRABILL
3621 Burgoon Road
Altoona PA 16602

DATE: October 2, 2006

BY:



David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION – LAW

CERTIFIED BUILDERS WHOLESALE,

Plaintiff

vs.

JOHN GRAY i/a/t/d/b/a GRAY

CONTRACTING, and TAMMY GRAY,

Defendants

: NO.: 06-1394-CD

:

: TYPE OF CASE:

: Civil Matter

:

: TYPE OF PLEADING:

: Answer and New Matter

:

: FILED ON BEHALF OF:

: Defendants

:

: COUNSEL OF RECORD FOR THIS PARTY:

: Brian H. Grabill, Esquire

: GRABILL & GRABILL, P.L.L.C

: 3621 Burgoon Road

: Altoona, PA 16602

: (814) 944-5090

: PA I.D. #: 77053

FILED NOCC
OCT 12 2006
JM

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFIED BUILDERS WHOLESALE,
Plaintiff : IN THE COURT OF COMMON PLEAS OF
vs. : CLEARFIELD COUNTY, PENNSYLVANIA
: :
JOHN GRAY i/a/t/d/b/a GRAY : NO.: 06 – 1394 – CD
CONTRACTING, and TAMMY GRAY, : :
Defendants : CIVIL ACTION - LAW
: :
: :

ANSWER AND NEW MATTER

AND NOW, comes the Defendants, by and through their attorney, BRIAN H. GRABILL, ESQUIRE, GRABILL & GRABILL, P.L.L.C., and files this Answer and New Matter of which the following is a more complete statement:

1.

Admitted.

2.

Admitted.

3.

Admitted.

4.

Admitted in part and denied in part. It is admitted that Defendant have purchased building materials from the Plaintiff in the past. It is specifically denied that Defendants purchased custom windows from the Plaintiff on or about May 26, 2006. Therefore, strict proof is demanded at time of trial.

5.

Admitted in part and denied in part. It is admitted that Defendants contacted Plaintiff by telephone on or about May 26, 2006. It is specifically denied that Defendants ordered custom windows totaling \$3,367.74. The Defendant was inquiring as to what the price would be for custom made windows. Defendant indicated during the telephone conversation that he was only inquiring as to price and did not want to make an order. Therefore, strict proof is demanded at time of trial.

6.

Admitted. It is admitted that John Gray has conducted business with Plaintiff in the past with the last order made by the Defendant on or about October, 2004. In those instances in the past where Defendants have made telephone orders with the Plaintiff, Defendants have specified to Plaintiff to order said windows and would receive a confirmation letter from Plaintiff clearly marked confirmation of order on the envelope. In this matter, Defendants did not request Plaintiff to order the windows but inquired about prices of the windows only.

7.

Denied. Defendants never placed an order for the windows and, therefore, Defendants could not have provided any confirmation of a window order. The letter sent by Plaintiff to Defendant lacked any notice that the same was a confirmation of order on the envelope. Therefore, strict proof is demanded at time of trial.

8.

Admitted. At the time the Plaintiff notified Defendant, John Gray, that it had received the special order windows, John Gray informed Plaintiff that he had not ordered windows but had been inquiring only as to price.

9.

Admitted in part and denied in part. It is admitted that Defendant has refused to pick up and pay for the custom windows. It is specifically denied that Defendant ordered these windows nor was a contract made and, therefore Defendant was not under any obligation to pick up or pay for the windows erroneously ordered by Plaintiff.

10.

Denied. Plaintiff is known by Defendant to regularly sell windows at their business as they frequently have patrons who purchase windows at their business. Therefore, strict proof is demanded at time of trial.

11.

Denied. Defendant deny that they owe Plaintiff any money as a result of the fact that there was no contract in this matter. Therefore, strict proof is demanded at time of trial.

12.

Admitted.

13.

Denied. It is denied that any interest is accruing on the account due to the fact that there was no breach of contract. Therefore, strict proof is demanded at time of trial.

14.

Denied. Defendant denies that they ordered any custom made goods from Plaintiff and, therefore, strict proof is demanded at time of trial.

15.

Denied. It is denied that any oral contract was entered between the parties as there was clearly no meeting of the minds nor did Defendant assent to the contract. Defendant inquired about prices only and Plaintiff erroneously and presumptuously ordered the windows. Strict proof is demanded at time of trial

16.

Denied. Defendant is not obligated to pay the balance of \$3,367.74 as they never contracted to order the custom made windows from Defendant.

17.

Paragraph 17 contains a legal conclusion to which no answer is deemed required. To the extent that an answer is deemed required, the same is denied in that a contract was never reached between Plaintiff and Defendant and, therefore, strict proof is demanded at time of trial.

18.

Denied. Plaintiff is not entitled to any interest due to the fact that no contract existed. Strict proof is demanded at time of trial.

19.

Defendant is without sufficient information or knowledge to admit or deny the averments in paragraph 19. To the extent an answer is deemed required, the same is denied in that

no award of counsel fees shall be awarded due to the fact that no contract was ever entered between Plaintiff and Defendant.

WHEREFORE, Defendant requests Plaintiff's Complaint be dismissed and judgment be entered in Defendant's favor.

NEW MATTER

20.

Paragraphs 1 through 19 are hereby incorporated by reference as though set forth at length herein.

21.

Defendant, JOHN GRAY, contracted an agent of CERTIFIED BUILDERS WHOLESALE, INC. on or about May 29, 2006 to inquire as to prices for custom made windows.

22.

That during this conversation with the agent for CERTIFIED BUILDERS WHOLESALE, Defendant, JOHN GRAY, informed said agent that he was only inquiring as to prices and was not ordering the same.

23.

That on or about June 7, 2006, Defendant, JOHN GRAY, priced windows at Kohl Building Products and purchased the same windows through their offices unaware that Plaintiffs had presumptuously ordered windows for which he had only asked for prices.

FAILURE OF CONSIDERATION

24.

Paragraphs 1 through 23 are hereby incorporated by reference as though set forth more fully at length herein.

25.

That no contract was entered by and between Defendant and Plaintiff as there was no meeting of the minds nor was there any consideration.

26.

That Plaintiff's presumptive order of the custom made windows does not create a contract by and between the Defendant and Plaintiff.

27.

That Plaintiff ordered said windows without receiving any verbal or written confirmation from JOHN GRAY as to said order.

28.

That Plaintiff currently possesses the windows and has never delivered said windows to Defendant.

29.

That Plaintiffs have failed and/or refused to mitigate any damages by way of resale of the custom made windows.

30.

Defendant asserts any and all affirmative defense as set forth in PA R.C.P. §1030(a) including but not limited to consent, estoppel, fraud, illegality, laches, truth and waiver.

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be dismissed and judgment be entered in favor of Defendant.

Respectfully submitted,

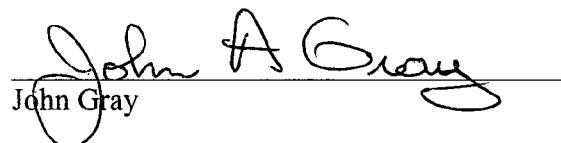
GRABILL & GRABILL, P.L.L.C.



Brian H. Grabill, Esquire
Attorney for the Defendant, John Gray and
Gray Construction and Tammy Gray.
3621 Burgoon Road
Altoona, PA 16602
(814) 944-5090
PA I.D. #: 77053

VERIFICATION

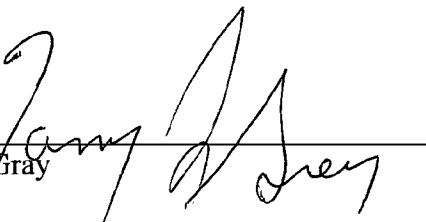
I verify that the statements in this ANSWER AND NEW MATTER are true and correct to the best of my knowledge and belief. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.


John A. Gray
John Gray

Dated: 10/10/06

VERIFICATION

I verify that the statements in this ANSWER AND NEW MATTER are true and correct to the best of my knowledge and belief. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Tammy Gray 

Dated: 10/06/06

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the ANSWER AND NEW MATTER by first class mail, postage prepaid, on the 11th day of October, 2006 as follows:

David R. Thompson, Esquire
Thompson Law Office
P.O. Box 587
Philipsburg, PA 16866

GRABILL & GRABILL, P.L.L.C.

BY: 

Brian H. Grabill, Esquire
Attorney for Defendants, John Gray,
Gray Construction and Tammy Gray
3621 Burgoon Road
Altoona, PA 16602
(814) 944-5090
PA I.D. #: 77053

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

CERTIFIED BUILDERS WHOLESALE,

Plaintiff

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No. 06-1394-CD

vs.

JOHN GRAY, i/a/t/d/b/a GRAY CONTRACTING,
and TAMMY GRAY,

Defendants

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

CERTIFIED BUILDERS WHOLESALE ,

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No. 06-1394-CD

Plaintiff

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vs.
JOHN GRAY i/a/t/d/b/a GRAY
CONTRACTING, and TAMMY GRAY

Defendants

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REPLY TO NEW MATTER

AND NOW, come the Plaintiff, Certified Builders Wholesale, by and through it's attorney, David R. Thompson, Esquire, and files the following Reply to New Matter:

Paragraphs 1 through 19 of Plaintiff's Complaint are incorporated herein by reference as though the same were set forth at length herein.

20. No response is necessary.
21. Admitted in part and denied in part. It is admitted that the Defendant contacted an agent of Certified Builders Wholesale in or about May of 2006. It is specifically denied that Defendant's purpose was to inquire prices for custom made windows. By way of further pleading, the Defendant ordered and requested that the Plaintiff make and provide said custom made windows.

22. Paragraph 22 is specifically denied for the reasons more fully stated in Plaintiff's Complaint herein.

23. After reasonable investigation, Plaintiff is without information sufficient to form a belief as to the truth or falsity of the averment. The same is therefore denied and strict proof is demanded at the time of trial.

24. No response is necessary.

25. Paragraph 25 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary, the same is denied, and strict proof is demanded at the time of trial.

26. Paragraph 26 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary, the same is denied, and strict proof is demanded at the time of trial.

27. Paragraph 27 is specifically denied or fully stated in Plaintiff's Complaint herein.

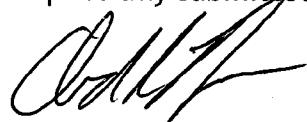
28. Admitted in part and denied in part. It is admitted that the Plaintiff currently possesses the windows. It is further admitted that the windows have never been delivered at the request of the Defendant. Specifically, Defendant demanded that Plaintiff not deliver said windows to his home.

29. Paragraph 29 is specifically denied. By way of further pleading, Plaintiff's had not had any opportunity to resale said custom made windows. Further, the windows are the property of the Defendant.

30. Paragraph 30 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary, the same is therefore denied, and strict proof is demanded at the time of trial.

WHEREFORE, Plaintiff respectfully request this Honorable Court to enter judgment in it's favor and against the Defendants in accordance with Plaintiff's Complaint, dismissing Defendants' Counterclaim with prejudice.

Respectfully submitted,



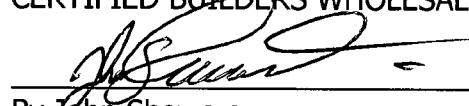
David R. Thompson, Esquire
Attorney for Plaintiff

VERIFICATION

I certify that the facts set forth in the foregoing **REPLY TO NEW MATTER** are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C. S. § 4904, relating to unsworn falsification to authorities.

CERTIFIED BUILDERS WHOLESALE

Dated: 10-18-06


By John Showers

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

CERTIFIED BUILDERS WHOLESALE,

Plaintiff

vs.

JOHN GRAY, i/a/t/d/b/a GRAY CONTRACTING,
and TAMMY GRAY,

Defendants

* No. 06-1394-CD

* TYPE OF PLEADING:
Certificate of Service

* FILED ON BEHALF OF:
Plaintiff

* COUNSEL OF RECORD FOR
THIS PARTY:
* David R. Thompson, Esq.
* Attorney at Law
* Supreme Court I.D. 73053
* P.O. Box 587
* 308 Walton Street, Suite 4
* Philipsburg PA 16866
* (814) 342-4100

FILED *1cc*
m 11:30 AM *Atty Thompson*
OCT 24 2006 *SS*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

CERTIFIED BUILDERS WHOLESALE,	*
	*
Plaintiff	No. 066-1394-CD
	*
	*
vs.	*
	*
JOHN Fey, i/a/t/d/b/a GRAY CONTRACTING, and TAMMY GRAY,	*
	*
	*
Defendant	*
	*

CERTIFICATE OF SERVICE

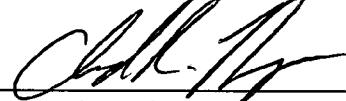
TO THE PROTHONOTARY:

I, **DAVID R. THOMPSON, ESQUIRE**, do hereby certify that I served a true and correct copy of the **Reply to New Matter**, in the above captioned matter by depositing the same in the U.S. First Class Mail, postage prepaid, addressed as follows:

John Gray, i/a/t/d/b/a Gray Contracting;
and Tammy Gray
c/o Brian H. Grabill, Esquire
GRABILL & GRABILL, P.L.L.C.
3621 Burgoon Road
Altoona, PA 16602

DATE: October 23, 2006

BY:



David R. Thompson, Esquire