

06-1610-CD

Brian Wisneski et al vs Corbett Homes Inc.

2006-1610-CD

Brian Wisneski et al vs Corbett homes

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

BRIAN F. WISNESKI and KATHRYN L. WISNESKI, Owner/Plaintiff : CIVIL ACTION
No. AO-16010-CD
vs. Type of Case:
CORBET HOMES, INC., Contractor/Defendant : Type of Pleading:

**WAIVER OF RIGHT TO
FILE MECHANIC'S LIEN**
Filed on Behalf of:
PLAINTIFF
Counsel of Record for this Party:
S. Casey Bowers, Esq.
Supreme Court No. 89032
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801
(814) 371-7768

Date: _____

FILED ^{cc}
OCT 03 2006
Atty Bowers
Atty pd.
20-00
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIAN F. WISNESKI and KATHRYN
L. WISNESKI,

Owner/Plaintiff

vs.

No. _____

CORBET HOMES, INC.,
Contractor/Defendant

WAIVER OF RIGHT TO FILE MECHANIC'S LIEN

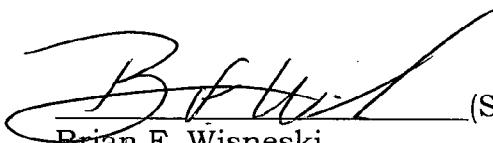
It is understood and agreed that the above named Contractor/Defendant will not file any Mechanic's Lien Claim or similar encumbrance for labor, material, or services furnished pursuant to a contract for the construction, erection, alteration, or repair of any building or improvement on land of Brian F. Wisneski and Kathryn L. Wisneski, Owners, located in the Sandy Township, Clearfield County, Pennsylvania, described on the attached Exhibit "A".

It is further understood that the execution of this agreement shall bind the undersigned General Contractor, any subcontractors dealing through him, any materialmen, or any other person providing services through any contract or agreement with the said Contractor or the said Owner.

The Contractor does hereby verify that on this date no work or services have been performed pursuant to the Construction Agreement, and no deliveries have been made to the Owner's premises.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 3rd day of October, 2006.

WITNESSES:


(SEAL)
Brian F. Wisneski


(SEAL)
Kathryn L. Wisneski

CORBET HOMES, INC., by:

By: 
(Contractor)

To the Prothonotary:

Kindly index this in the name of the Contractor as both the Plaintiff and Defendant, and in the name of the Owner as both Plaintiff and Defendant.

COMMONWEALTH OF PENNSYLVANIA

SS:

COUNTY OF CLEARFIELD

On this, the 3rd day of October, 2006, before me, the undersigned officer, personally appeared DANIEL L. CORBET who acknowledged himself to be the PRESIDENT of **CORBET HOMES, INC.**, and that he, as such PRESIDENT, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as PRESIDENT.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Barbara A. Bowser

Notary Public

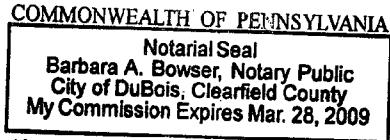


Exhibit A

**Brian F. Wisneski and Kathryn L. Wisneski
Sandy Township, Clearfield County, PA**

Tax I. D. #128.0-B04-430-0018

All that certain piece or parcel of land lying and being in Sandy Township, Clearfield County, Pennsylvania, bounded and described as follows:

Beginning at an iron pipe at the corner of Brady Street and Dixon Avenue; thence North 39 degrees 10 minutes West 113.5 feet to an axle; thence North 35 degrees 45 minutes West 100 feet to an iron pipe; thence North 54 degrees 13 minutes East 150 feet to an iron pipe at Burkey Alley; thence South 35 degrees 45 minutes East along Burkey Alley 146.95 feet to an iron pipe at the right-of-way of South Brady Street; thence South 27 degrees 33 minutes West 158 feet along right-of-way of South Brady Street to an iron pipe and place of beginning.

Being Lots Nos. 1, 2, 3 and 4 of the George Schwem Addition to DuBois.

Subject to all exceptions, reservations, conditions, restrictions, easements and rights-of-way as fully as the same are contained in all prior deeds, instruments or writings or in any other manner touching or affecting the premises hereby conveyed.

Excepting therefrom any portion of the said premises taken by the Commonwealth of Pennsylvania for the widening of South Brady Street and/or Dixon Avenue as set forth in documents recorded.

Being the same premises conveyed to Thomas R. McConnell and Frances F. McConnell, husband and wife, by deed of James C. Biddle and L. Irene Biddle, husband and wife, dated April 4, 1997, and recorded in the Office of the Recorder of Clearfield County in volume 1831, page 222.

And Being the same premises conveyed to Brian F. Wisneski and Kathryn L. Wisneski, husband and wife, by deed of Thomas R. McConnell and Frances F. McConnell, husband and wife, by deed dated June 20, 2006, and intended to be recorded herewith.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101986
NO. 06-1609-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: HAROLD A. WILSON JR. and BETSY WILSON

Husband & wife

vs.

DEFENDANT: GARY L. BOWMAN, t/d/b/a BOWMAN MASONRY

FILED

01/31/07
JAN 11 2007

William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF RETURN

NOW, October 04, 2006 AT 9:30 AM SERVED THE WITHIN COMPLAINT ON GARY L. BOWMAN, t/d/b/a BOWMAN MASONRY DEFENDANT AT 1993 TURNPIKE AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO LOU BOWMAN, WIFE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

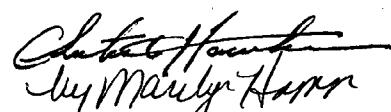
SERVED BY: HUNTER / DEHAVEN

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	GEARHART	8506	10.00
SHERIFF HAWKINS	GEARHART	8506	20.39

Sworn to Before Me This

____ Day of _____ 2007

So Answers,



Chester A. Hawkins
Sheriff

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

HAROLD A. WILSON, JR., and
BETSY WILSON, Husband and Wife,
Plaintiffs

vs.

GARY L. BOWMAN, t/d/b/a
BOWMAN MASONRY,
Defendants

COPY

No. 2006-1609-CD

CASE NUMBER: 2006-

TYPE OF CASE: Civil

TYPE OF PLEADING: COMPLAINT

FILED ON BEHALF OF: Plaintiffs

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

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

OCT 03 2006

Attest.



William L. Bane
Prothonotary/
Clerk of Courts

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

HAROLD A. WILSON, JR., and :
BETSY WILSON, Husband and Wife, :
Plaintiffs :
vs. : No. 2006-
GARY L. BOWMAN, t/d/b/a :
BOWMAN MASONRY, :
Defendants :
:

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or 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's Office
Clearfield County Courthouse
Clearfield, PA 16830
814-765-2641

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

HAROLD A. WILSON, JR., and
BETSY WILSON, Husband and Wife,
Plaintiffs

vs.

No. 2006-

GARY L. BOWMAN, t/d/b/a
BOWMAN MASONRY,
Defendants

COMPLAINT

NOW COME the Plaintiffs, HAROLD A. WILSON, JR. and BETSY WILSON, husband and wife, by and through their attorney R. DENNING GEARHART who file this Complaint, and in support thereof aver as follows:

1. The Plaintiffs are the owners of the premises known as 911 South Second Street, Clearfield, Pennsylvania 16830. This is their residence and where Plaintiff, Betsy Wilson, operates a beauty shop. It is in Lawrence Township.
2. The Defendant, Gary L. Bowman, resides at 1993 Turnpike Avenue, Clearfield, Pennsylvania 16830. He trades and does business as Bowman Masonry. In so doing, he holds himself out as experienced, knowledgeable, and competent in construction – particularly as it pertains to masonry, basements and foundations, and related plumbing.
3. As such, the Defendant entered into a contract with Plaintiffs to install drains in their basement. Plaintiffs did so because they relied on Defendant's expertise to advise what was appropriate and what was legal.
4. Pursuant to that contract, Plaintiffs paid Bowman Masonry the sum of

One Thousand Eight Hundred Forty (\$1,840.00) Dollars. (A copy of that check paid to Gary Bowman is attached hereto as Exhibit "A".) In consideration, the Defendant installed drains along the left side of the basement, draining into the main drain where the washing machine and the laundry tub empty.

5. At no time did the Defendant advise the Plaintiffs that the installation of this drain would be illegal in that it was connected to the public sewer. This, in spite of the fact that Defendant has been involved in his business in excess of 20 years and is well aware of the rules and regulations, especially as they pertain to the Clearfield area, including Lawrence Township. These drains were installed on or about September 1, 2005.

6. Shortly thereafter, Brian Barr, came in to repair the furnace of the property and noticed the work done by the Defendant. Brian Barr informed the Plaintiff, Betsy Wilson, that the work was done illegally in that it was tapped into the public sewer line.

7. On September 19, 2005, Plaintiff, Betsy Wilson, called Gary Bowman and asked him if it was true that he had tapped in illegally. He said, "Now Betsy, I wouldn't go that far and say that. You can trust me, I wouldn't do anything illegal. Don't you worry about it."

8. On October 3, 2005, water was coming up over the drains when the washing machine was draining out. Plaintiff called Hoyt Plumbing. Hoyt Plumbing again advised the Plaintiff that when Bowman Masonry tapped in on the sewer line it was not only illegal but was improper in that it was too level with the washing machine and did not leave enough downflow for the water. Therefore, it came over the drains. Hoyt charged the Plaintiff for a temporary fix, the sum of Two Hundred Forty-three and

37/100 (\$243.37) Dollars. Hoyt Plumbing again advised Plaintiff that the job was illegal and that they could be fined by the Township.

9. On October 4, 2005, Plaintiff, Betsy Wilson, called Gary Bowman and informed him that the water was coming up over the drains and that Hoyt Plumbing had temporarily fixed it. Gary Bowman advised that he felt bad. Plaintiff then asked Defendant if it was illegal to tap into the main sewer line. He again stated, "Oh, I wouldn't take it that far." Plaintiff, Betsy Wilson, then questioned what she should tell an inspector if an inspector questioned her. She was told by Gary Bowman, "You could play stupid." Several calls were made thereafter requesting that he come and fix the problem. Finally, he advised the Plaintiffs that the only remedy would be a sump pump, and that he was not going to install a sump pump without an additional charge. On December 15, 2005, Plaintiffs were contacted by Lawrence Township who contacted their engineers, Hess & Fisher, who came and inspected the premises and took pictures.

10. Then on January 31, 2006, the Lawrence Township Board of Supervisors sent a letter to Gary Bowman advising him of the problem. (A copy of that letter is attached as Exhibit "B".) There has been no response to that letter.

11. In an attempt to remedy the problem, the Plaintiffs will be forced to hire someone to install a sump pump. They have received an estimate from Hoyt Plumbing. That estimate is for One Thousand Eight Hundred (\$1,800.00) Dollars. A copy of the estimate is attached as Exhibit "C".

COUNT I - VIOLATION OF THE UNFAIR TRADE PRACTICES ACT

12. All previous paragraphs of this Complaint are hereby incorporated as if fully averred.

13. By installing a drain that the Defendant knew was illegal and knew would not meet Code and put the Plaintiffs in danger of legal repercussions, the Defendant violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 as follows:

(xvi) Making repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing;

14. Under said Act, specifically 73 P.S. § 201-9.2, the Plaintiffs aver that they are entitled to damages in the amount of \$1,840.00 plus treble damages bringing the total amount of damages to Seven Thousand Three Hundred Sixty and 00/100 (\$7,360.00) Dollars, plus attorneys' fees.

WHEREFORE Plaintiffs request your Honorable Court to enter a judgment against the Defendant in the amount of Seven Thousand Three Hundred Sixty and 00/100 (\$7,360.00) Dollars, plus attorneys' fees.

COUNT II - CONTRACTUAL DAMAGES

15. All paragraphs previously averred are hereby incorporated herein as if fully averred.

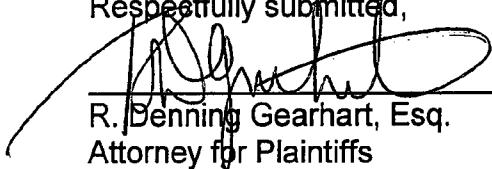
16. By doing the actions set forth above the Defendant violated its contract

with Plaintiffs in that it failed to perform its work in a workmanlike manner consistent with that which is to be expected of someone in his profession. That as a result, the Plaintiffs will have to spend the sum of One Thousand Eight Hundred (\$1,800.00) Dollars, and have already spent the sum of Two Hundred Forty-three and 37/100 (\$243.37) Dollars to Hoyt Plumbing.

17. Further, Defendant acted in a manner so outrageous and inexcusable as to require a finding of punitive damages including but not limited to attorneys' fees.

WHEREFORE Plaintiff requests your Honorable Court to enter a judgment against the Defendant in an amount equal to Two Thousand Forty-three and 37/100 (\$2,043.37) Dollars, plus punitive damages and attorneys' fees to be determined by the Court.

Respectfully submitted,


R. Denning Gearhart, Esq.
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA

SS.

COUNTY OF CLEARFIELD

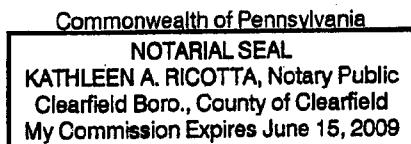
Before me, the undersigned officer, a Notary Public in and for the above named State and County, personally appeared HAROLD A. WILSON, JR., and BETSY WILSON, who being duly sworn according to law deposes and says that the facts set forth in the foregoing Complaint are true and correct to the best of their knowledge, information and belief.

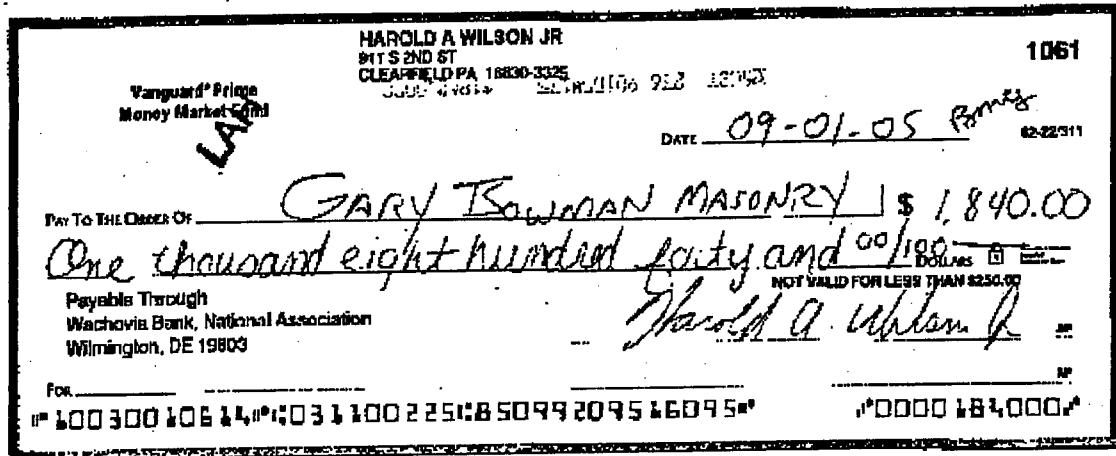
Harold A. Wilson Jr.
HAROLD A. WILSON, JR.

Betsy Wilson
BETSY WILSON

Sworn to and subscribed
before me, this 2
day of October, 2006.

Kathleen A. Ricotta
Notary Public





Hoyer Plumbing 11/30/05
CHECK # 1409 \$243.37

LAWRENCE TOWNSHIP BOARD OF SUPERVISORS

SUPERVISORS

WILLIAM D. LAWHEAD
EDWARD E. BROWN
DANIEL G. MITCHELL, SR.

(814) 765-0176



P.O. BOX 508
CLEARFIELD, PA. 16830

SECRETARY-TREASURER
BARBARA SHAFFNER

(814) 765-4551
FAX (814) 765-6268
E-Mail ltbos@pennswoods.net

Tuesday, January 31, 2006

Bowman Masonry
1993 Turnpike Avenue Extension
Clearfield, Pa 16830
Attention: Mr. Gary Bowman

RE: Illegal sub grade drain system connected to public sewer system Betsy Wilson
property at 911 South Second Street

Dear Mr. Bowman:

It has been brought to our attention and confirmed by our inspectors, that you, as the contractor for the above property owner, constructed a sub grade, basement toe drain system that intercepts seepage water coming into the basement and conveys it to the public sewer line, as per your construction and connection.

Gary, Lawrence Township is under a consent order with D.E.P. to remove inflow and infiltration from our sewage system. If this condition is allowed and subsequently identified by D.E.P. Lawrence Township will be fined by D.E.P., they have already limited our taps which has the potential to curtail our development.

This situation must be rectified in the next 30 days. You have placed us and the Wilson's in a negative situation, you and them will face penalties for this action if not corrected immediately.

When repairs have been started you must notify Hess & Fisher to have them inspected before completion.

Gary please give this job your utmost attention. Make Contact with Wilson Fisher and Hope Martin A.S.A.P

Thank you for your Cooperation.

William D. Lawhead, Chairman

31 Aug 96



Betsy
Wilson
Hoyt

JAMES HOYT PLUMBING, INC.

P.O. BOX 323 HYDE, PA 16843
(814) 765-7139 FAX (814) 765-4887

Betsy & Hank Wilson
911 5th and 5th
Cleld Pt 16830

Ref.

Sump pump.

1. Install Sump Pump & Receiver to Pump
Outside to Remove Ground water from Sewage line.
2. Bust up floor Installs pit in corner of
Basement floor Tiling in wall channel for Ground water.
3. Change Sink line in to Sewage line.
4. move Laundry Tub & washer to make room for
pit.
5. Recement Shower & Complete Job

Projected Cost \$1800.00

Faxed 78 - 765-9142

Thank you
B. S. short