

06-1686-CD
S&S Ventures Inc. vs Walker Dev. Serv.

2006-1686-CD
S and S Ventures vs Walker Development

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

S. AND S. VENTURES, INC.,
Plaintiff

v.

WALKER DEVELOPMENT
SERVICES, LLC
Defendant

: No. 06-1686-CJ

: Type of Pleading: Complaint

: Filed on behalf of: S. and S. Ventures, Inc.,
Plaintiff

: Counsel of Record for this party:

: HOPKINS HELTZEL, LLP

: DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

: 100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801
(814) 375-0300

FILED 2CC
01/13/06 Atty
Atty Hopkins
William A. Shaw
Prothonotary/Clerk of Courts PD 85.00

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

NOTICE

TO: Defendant

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Amended Complaint is 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.

Office of the Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 (ext. 5982)

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

S. AND S. VENTURES, INC., :
Plaintiff, :
: :
v. : No.
: :
WALKER DEVELOPMENT :
SERVICES, LLC :
Defendant :
:

COMPLAINT

AND NOW, comes S. and S. Ventures, Inc., by and through its attorneys, Hopkins Heltzel LLP, and files the within Complaint against the Defendant Walker Development Service, LLC and in support thereof says as follows:

COUNT I – BREACH OF CONTRACT

1. Plaintiff S. and S. Ventures, Inc., a Pennsylvania Limited Liability Company, whose principal address is 602-9 West DuBois Avenue, DuBois, Clearfield County, Pennsylvania.
2. Defendant Walker Development Services, LLC is believed to be a Kansas Limited Liability Company, whose principal address is 4370 W. 109th Street, Suite 210, Overland Park, Kansas 66211.
3. Defendant holds itself out as an expert consultant in the fields of restaurant design management and construction.
4. Plaintiff planned to build a Quaker Steak & Lube Restaurant in Centre County, Pennsylvania.

5. Plaintiff hired Defendant to provide consulting, construction, purchasing and management services to Plaintiff for construction of the aforesaid Quaker Steak & Lube Restaurant.

6. Plaintiff and Defendant entered into a written contract, a copy of which is attached hereto as Exhibit "A".

7. Defendant breached its contract with Plaintiff by failing to provide consulting, management and construction services in one or more of the following ways:

- a. Wires and switchbox in vestibule had to be rerouted;
- b. Conduits were broken while hanging cars and decorations;
- c. Incurred additional labor and costs for moving transformer;
- d. Assorted electrical change orders due to poor planning and blueprints;
- e. Transformer pad had to be moved;
- f. Duct was installed in wrong location and had to be moved;
- g. Décor was greatly under quoted.
- h. Glazing was overlooked;
- i. Restroom layout had to be changed;
- j. Kitchen layout had to be changed;
- k. Failed to install decorations in restaurant causing Plaintiff to incur additional expenses;
- l. Charged Plaintiff for light poles;
- m. Failed to schedule properly causing Plaintiff to incur winter condition expenses;
- n. Failed to have sufficient knowledge of the local codes;

- o. Plaintiff incurred change order expenses due to improper scheduling;
- p. Commercial lighting change causing Plaintiff to incur additional expenses;
- q. Incorrect design and construction of entryway causing water damage in entryway;
- r. Installation of bottle rack not provided for in quote package;
- s. Permitted dual payments to subcontractors;
- t. Failing to remedy plasma TV wall problems after being notified in February;
- u. Overcharging on architectural layouts for patio;
- v. Billing for first prototype design mistakes;
- w. Failure to include pipe bollards in quote;
- x. Charged Plaintiff for construction documents causing Plaintiff to incur addition expenses.
- y. Broke two neon signs. Plaintiff had to replace signs and incurred replacement costs.
- z. Quoted 6 trips but billed for 16 trips.
- aa. Loss of reputation.
- bb. Loss of operations at opening business due to inexperience.

8. The actions of Defendant constitute a breach of the contract between the parties and as a result thereof, Plaintiff has suffered damages in an amount in excess of \$25,000.00.

WHEREFORE, Plaintiff prays this Honorable Court grant judgment against Defendant for compensatory damages in an amount in excess of \$25,000.00, costs of suit, and such other and further relief as the Court deems fair, just and equitable.

COUNT II – NEGLIGENCE

9. Plaintiff repeats all of the allegations set forth in Count I as if set forth at length herein.

10. Defendant owed Plaintiff a duty to perform the consulting construction and management services in a reasonable manner, as an expert in the field would so conduct its business affairs.

11. Defendant was negligent in its performance of construction, consulting and management services on behalf of Plaintiff.

12. The negligence consisted of the following:

- a. Wires and switchbox in vestibule had to be rerouted;
- b. Conduits were broken while hanging cars and decorations;
- c. Incurred additional labor and costs for moving transformer;
- d. Assorted electrical change orders due to poor planning and blueprints;
- e. Transformer pad had to be moved;
- f. Duct was installed in wrong location and had to be moved;
- g. Décor was greatly under quoted.
- h. Glazing was overlooked;
- i. Restroom layout had to be changed;
- j. Kitchen layout had to be changed;
- k. Failed to install decorations in restaurant causing Plaintiff to incur additional expenses;
- l. Charged Plaintiff for light poles;

- m. Failed to schedule properly causing Plaintiff to incur winter condition expenses;
- n. Failed to have sufficient knowledge of the local codes;
- o. Plaintiff incurred change order expenses due to improper scheduling;
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- y. Broke two neon signs. Plaintiff had to replace signs and incurred replacement costs.
- z. Quoted 6 trips but billed for 16 trips.
- aa. Loss of reputation.
- bb. Loss of operations at opening business due to inexperience.

13. As a result of Defendant's negligence Plaintiff has suffered damages.

14. Defendant's negligence was the proximate cause of Plaintiff's injuries.

15. Plaintiff's injuries exceed \$25,000.00.

WHEREFORE, Plaintiff prays this Honorable Court grant judgment against Defendant for compensatory damages in an amount in excess of \$25,000.00, costs of suit, and such other and further relief as the Court deems fair, just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff, S. and S. VENTURES, INC., by its undersigned counsel, hereby demands a trial by jury of twelve people.

Respectfully submitted,

HOPKINS HELTZEL LLP



David J. Hopkins, Esquire
Attorney for Plaintiff

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

S. and S. Ventures, Inc.

By: 



WALKER DEVELOPMENT SERVICES

Food Service & Hospitality

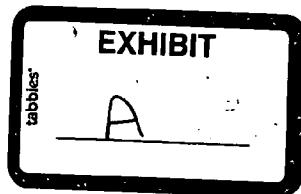
DEVELOPMENT CONSULTING

**PROJECT DEVELOPMENT
AGREEMENT
FOR:
LARRY SALONE**



**Quaker Steak and Lube Franchisee
Freestanding Prototype Site Adaptation**

November 12, 2004



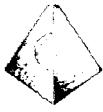
913-906-9700 F: 913-906-9714
4370 W. 109th STREET • SUITE 210 • OVERLAND PARK, KS • 66211

**WALKER DEVELOPMENT SERVICES***Food Service & Hospitality*

DEVELOPMENT CONSULTING

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WALKER DEVELOPMENT SERVICES

Food Service & Hospitality

DEVELOPMENT CONSULTING

PROJECT DEVELOPMENT AGREEMENT

This Consulting Agreement (the "Agreement") is made this date: November 15th, 2004, by and between **Walker Development Services, LLC ("WDS")**, with offices at 4370 W. 109th Street, Suite 210, Overland Park, Kansas 66211 and a **Quaker Steak and Lube Franchisee, ("Client")**, with offices located at: _____

I. GENERAL STATEMENT

Client wishes to retain the professional consulting services of WDS in the development of a "Quaker Steak and Lube" freestanding prototype restaurant in State College, PA in accordance with the terms of this Agreement. WDS agrees to provide such services on the terms and conditions contained herein.

II. SERVICES PROVIDED BY WDS

WDS will provide the services listed below:

SCOPE OF SERVICES

A. PRELIMINARY SITE INVESTIGATION AND DEVELOPMENT PLANNING

A site investigation to determine design criteria, local codes and ordinances, utility requirements, fees, submittal and review schedules necessary to develop a project. This information is then reviewed with the Owner and Design Team establishing a complete project critical path plan which details design criteria, design coordination and reviews, permitting and bidding processes and activities to achieve a successful construction start date.

1. Preliminary Site Investigation & summary report document to coordinate design and determine permitting processes and timing. No site visit included (assumes new construction).
2. Prepare Preliminary Directory of contact information for all personnel and authorities involved with the project.
3. Prepare a Milestone Development Schedule based upon site investigation research, detailing critical dates of design, bidding, purchasing, permitting, construction, Owner Supplied Items (OSI) installations, turnover, training and opening.
4. Preliminary Cost Estimate based upon discovered conditions and historical costs.
5. Permits & Licensing documents database.

B. SUPPLEMENTAL DUE DILIGENCE: The following items would be billed on an hourly (or trip charge) as needed and owner approved basis only.

1. Existing conditions inspection and/or site visit for design review coordination with Architects and Engineers.
2. On-site Landlord presentations.
3. Environmental study review and coordination.
4. Environmental permit coordination.
5. Soils report coordination.
6. ALTA survey coordination.
7. Zoning Hearings attendance and Review Meetings.
8. Additional site investigations to determine existing conditions with architects and engineers; for design intent, cost estimate projections and scheduling predictions.
9. Assist real estate broker in coordination of customized Letter of Intent (LOI) and Work Letter for site specific conditions.
10. Assist in Lease Negotiations of deal points with owner, LL and attorneys.
11. Develop feasibility plans for site plans and interior designs.
12. Coordinate site submittal packages for corporate site and design approvals.

C. PROJECT MANAGEMENT

1. PLAN COORDINATION:

- a. Provide management and coordination of the Architectural, Engineering, Civil, Landscaping and Vendor Design Team to produce complete, accurate and per local Code plans and specifications for permitting, bidding and Landlord approvals.
- b. Manage the client and franchisor approvals of Preliminary Concept Plans.
- c. Management and coordination with Design Team including, Architect, Mechanical, Electrical and Plumbing (MEP) Engineering, and Food Service Equipment (FSEQ) Designer for all plans specifications and purchasing criteria to comply with local codes and site specific conditions. Coordination of site civil and landscaping design requirements if applicable.
- d. Coordinate with FSEQ vendor during the preparation of the equipment plans. (Plans by FSEQ Contractor/Vendor).
- e. Preliminary Landlord approval coordination.
- f. Plan review of Civil, Architectural, MEP and Foodservice drawings at 75% completion.
- g. Red Lines and comments coordinated with Architect of record within 24 hours of review.
- h. Final plan review and coordination of Bid & Permit documents.

2. PRE-CONSTRUCTION ADMINISTRATION:

Manage the qualifying and bidding process for general contractors to achieve competitive pricing and selection recommendation for Client's final approval. Develop Construction and Vendor delivery and installation schedules as part of the bid package. Analyze all bids and pricing with the client for all contracts and purchasing decisions.

- a. Qualify General Contractors and prepare bidders list.



- b. Preparation and distribution of instructions and bid documents to GC's.
- c. Coordinate distribution of plans and instructions to corporate qualified vendors of OSI, FSEQ and Furniture Fixtures and Equipment (FF&E).
- d. Analysis of bids and recommendations for General Contractor to Client for approval.
- e. Review proposals supplied by Vendors and make recommendations to Client.
- f. Notice to Proceed to General Contractor, with Owner's authorization.
- g. Landlord coordination for start date approvals.

3. PERMITTING, SUBMITTALS, AND APPROVALS:

Manage and coordinate the application submittals and receipt of all building and health permits and approvals necessary to achieve a successful construction start. Provide critical management systems and personnel to assure permits are received in an efficient and expeditious manner.

- a. Landlord final submittals and approval coordination.
- b. Building permits submittal coordination (sprinkler, alarm, and subcontractor permit submittals by the subcontractors).
- c. Coordination of all Building Department comments for plan revisions and re-submittal requirements.
- d. Health Department submittals.
- e. *Utility applications, business license applications, and liquor licenses by client/franchisee.*

4. CONSTRUCTION MANAGEMENT AND VENDOR COORDINATION:

Construction Management services to establish critical path construction, delivery and installation schedules. Coordinate key activities with the General Contractor and Vendors, and assist in managing critical events. Six (6) site visits to review scheduling adherence, quality control, OSI installations, and punch list.

16 trips!!

- a. Prepare and coordinate OSI delivery schedule with General Contractor and Vendors
- b. Contract Administration: Coordination of all contract documents, pay requests, change orders, lien releases and Landlord issues with Client's approval.
- c. Establish project schedule with Vendors, GC, and Client.
- d. On site pre-construction conference with General Contractor and Sub-contractors to discuss protocol, procedures, schedules, Vendors, design details, RFI's, submittals, etc.
- e. Ongoing Landlord coordination.
- f. Utility installation follow-up and start up timing coordination.
- g. Ongoing communications with Project Superintendents and General Contractor Project Manager for updates and issue resolutions with Architects, Engineers, Landlords, and Vendors, etc.
- h. Weekly reporting: Schedule updates, OSI schedule, Change Order Log, Submittal Log.
- i. Site visits:
 - 1) Six (6) site visits during construction. (1) Pre-construction meeting, (2) slab pour, (3) MEP rough-in and wall close-in stage, (4) the beginning of



the installation of finishes for review of schedule adherence, and quality control and (5) Kitchen equipment install.

- 2) A final site visit (6) the week of turnover to assist CO inspections and conduct a punch list walk through.
- 3) Additional site visits as necessary to manage schedule adherence at owner's request – (daily fee basis).

j. Provide Client-biased review and coordination of all change order requests and submittal documents.

k. Coordinate installation of all décor with contractor/vendor.

- l. Review Vendor installations for completeness, correctness and quality (soda, beer, Ecolab, CO2, dumpster/compactor, phone, security, kitchen equipment, etc.).
- m. Coordinate delivery and installation of OSI materials including startups and calibrations.
- n. Coordinate punch list inspections with Vendors, Contractors and Owner.
- o. Coordinate turnover with Operations.

p. Project Close Out: Expeditiously close out project with the Client, Contractor and Developer while delivering a project history; project directory, warranties and as-built plans in hard copy for future reference.

- 1) Final Change Orders are received, reviewed and formalized.
- 2) Final billings and lien releases completed.
- 3) Final Certificate of Occupancy.
- 4) As-Built Plans
- 5) Project close-out files and distribution to appropriate parties.
- 6) Landlord submittals (as required).

III. CLIENT'S OBLIGATIONS

In consideration for WDS's agreement to perform the services above, Client agrees to pay WDS for its professional consulting services the amounts specified below:

WDS FEE COMPENSATION SCHEDULE:

A. Preliminary Site Investigation and Development Planning.....\$3,000

B. Supplemental Due Diligence/Hourly Services (as directed by client).

Schedule of hourly fees:

Client shall, when applicable, pay hourly rates to WDS in accordance with the following rate schedule:

Hourly fees:

Mark Walker	\$120/hr
Project Directors	\$100/hr
Project Manager	\$70/hr

Trip fees per day:

Mark Walker	\$1,000
-------------	---------



Project Directors	\$900
Managers	\$700

C. Project Management.....\$28,000

(Excludes all Architectural/Engineering and other professional consulting services required by Client beyond WDS in-house staff.)

D. Expenses:

Client shall reimburse WDS for all reasonable expenses to the Project, including without limitation, the following: travel-related expenses (mileage, airfare, parking, rental cars, lodging, meals, etc.) as approved by Client, delivery charges, applicable percentage of ~~mobile phone charges~~, long distance telephone charges, applicable taxes, reproduction and printing charges, facsimile charges and miscellaneous expenses required and approved by Client. Client shall reimburse WDS upon presentation of an itemized invoice at 1.10 times cost.

E. Billings:

1. Invoices shall be submitted for all fees due WDS.
2. All amounts due WDS hereunder are payable fifteen (15) days following Client's receipt of invoice. Amounts due and unpaid by Client thirty (30) days beyond the date of receipt shall bear interest at the rate of (1%) per month until paid, following ten (10) days written notice from WDS that a payment is late. WDS may suspend or discontinue all services until all amounts due WDS are paid. In addition to the foregoing payments, Client shall cooperate fully with WDS in good faith and in a diligent manner so that WDS can provide the professional consulting services in an efficient and timely manner.
3. Project Management Billing Schedule:
 - a. A **retainer fee of \$3,000** will be due upon commencement of WDS services.
 - b. Additional billings will be done based upon the following milestone completions:
 - 1) Completion of Site Investigation\$4,000
 - 2) Completion of Plans and permits submitted.....\$4,000
 - 3) Permits received/Bids received\$4,000
 - 4) Slab rough in inspection complete.....\$4,000
 - 5) Wall/MEP rough in inspection complete.....\$4,000
 - 6) Kitchen equipment install inspection complete.....\$4,000
 - 7) Turn over to operations**Final Billing**



**IV.
GENERAL CONDITIONS AND TERMS**

1. **CLIENT DECISIONS; INDEPENDENT CONTRACTOR.** Client maintains authority for all final decisions for the Project. WDS will not be held liable for any Client decisions arising out of WDS services hereunder or for the performance of any third party. WDS's maximum liability shall be fees paid to WDS for the portion of the work giving rise to liability, plus the reasonable cost of curing a defect in the work. In no event shall WDS be liable for consequential, special, incidental or punitive loss damage or expense, including by way of example and without limitation, lost profits and/or opportunity costs, unless caused by the negligent acts or omissions of WDS. WDS is an independent contractor and not an agent of Client. ★
2. **TIMELINES AND BUDGETS.** The development timelines and budgets developed for the Project are intended to be used as guidelines only. WDS shall not be responsible for delays and variations to timelines and budget estimates, unless caused by the negligent acts or omissions of WDS. (circled)
3. **MEDIATION.** The parties shall work to resolve in good faith any conflict, dispute or controversy that arises between the parties during the term of this Agreement. Any unresolved conflict, dispute or controversy shall be submitted to non-binding mediation. (circled)
4. **TERMINATION.** This contact shall remain in effect for 365 calendar days from date of full execution. Either party may terminate this Agreement, with or without cause, upon giving thirty (30) days written notice to the other party. In the event of such termination, WDS shall cooperate with Client to transfer all materials and documents to Client and assist in the orderly transition of services for a period of thirty (30) days after receiving notice of termination. Upon termination by either party, Client shall pay WDS within fifteen (15) days of receiving an invoice and any outstanding materials or documents related to the terminated project, as reasonably requested by Client from WDS all amounts due to WDS hereunder.
5. **CONFIDENTIAL INFORMATION; TRADEMARK.** The parties acknowledge the importance of protecting confidential information, including without limitation, restaurant design, site selection criteria, specified equipment and suppliers, trade secrets, profit margins, cost lists, business plans and strategies ("Confidential Information"). Client shall retain all ownership interest in Client's trademark utilized for the project. Neither party shall divulge or distribute confidential information owned by the other party to third parties. All Confidential Information produced by WDS, including all processes, procedures, contact lists and other documents and materials, shall be proprietary to WDS and shall remain in the exclusive ownership and control of WDS. Information within the public domain shall not be deemed confidential.
6. **INDEMNIFICATION; WAIVER.** The parties agree to indemnify, defend and hold each other, their officers, agents and employees, harmless from and against any and all claims, costs, losses, or expenses, including attorney's fees, arising or resulting from the indemnifying parties' negligent or wrongful acts or omissions, unless such third parties were agents, contractors or otherwise providing goods or services on behalf of the indemnifying party; provided, however, neither party shall be obligated to indemnify the other party for the negligence or wrongful acts of the other party. Each party waives rights of subrogation. AF
7. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding between the parties and supersedes any and all contemporaneous or former agreements. No amendment or modification of this Agreement shall be effective unless reduced to writing and executed by the parties. Such modification or amendment shall be attached to, and thereupon shall become part of, this Agreement.



8. MISCELLANEOUS. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Kansas. This Agreement may not be assigned without the prior written consent of both parties. This Agreement shall be binding upon and inure to the benefit of all assigns and successors in interest of any kind of the parties hereto. The headings herein are for convenience of reference only and shall not be considered in any interpretation of this Agreement. Notices required to be given hereunder shall be sent by certified, return receipt requested, or registered mail to the parties at the addresses set forth in the heading to this Agreement.

The parties hereto have caused this Agreement to be executed on the date first above written. The undersigned warrant they are duly authorized representatives of Client and Walker Development Services, as applicable, and hereby accept and agree to the terms of this Agreement.

SIGNED:

Larry Salone
Company:

By: *Larry* Date: *11/15/04*

Mark Walker
Walker Development Services

By: *Mark Walker* Date: *11/15/04*



S. AND S. VENTURES, INC., : IN THE COURT OF COMMON PLEAS OF
Plaintiff, : CLEARFIELD COUNTY, PENNSYLVANIA
vs. : CIVIL ACTION - LAW
WALKER DEVELOPMENT SERVICES, : No. 06-1686-C.D.
LLC, :
Defendant. : **PRAECIPE TO ENTER APPEARANCE**
: Filed on behalf of: Defendant,
: Walker Development Services,
: LLC
: COUNSEL OF RECORD FOR PARTY:
: Scott C. Etter, Esquire
: PA I.D. #72789
: MILLER, KISTLER, CAMPBELL,
: MILLER, WILLIAMS & BENSON, INC.
: 720 South Atherton Street
: State College, PA 16801
: (814) 234-1500

FILED *NOCC*
10:30 AM
NOV 13 2006

William A. Shaw
Prothonotary/Clerk of Courts

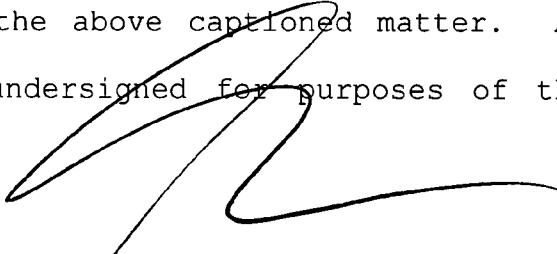
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

S. AND S. VENTURES, INC., :
Plaintiff :
:
vs. : No. 06-1686-C.D.
:
WALKER DEVELOPMENT SERVICES, :
LLC, :
Defendant. :
:

PRAECIPE TO ENTER APPEARANCE

To the Prothonotary:

Please enter my appearance on behalf of Defendant, Walker Development Services, LLC, in the above captioned matter. All papers may be served on the undersigned for purposes of this action.



Scott C. Etter, Esquire
I.D. #72789

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
720 South Atherton Street
State College, PA 16801-4628
(814) 234-1500

Attorneys for Defendant,
Walker Development Services, LLC

Dated: November 10, 2006

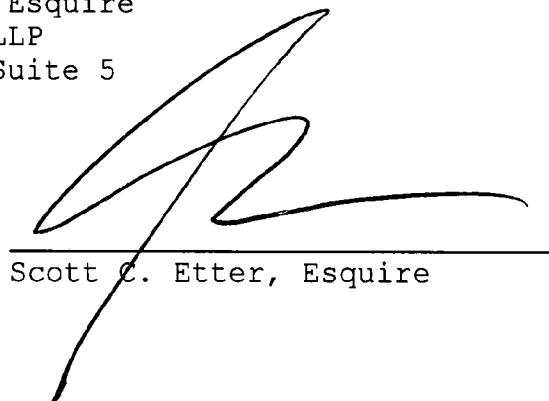
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

S. AND S. VENTURES, INC., :
Plaintiff :
:
vs. : No. 06-1686-CD
:
WALKER DEVELOPMENT SERVICES, :
LLC, :
Defendant. :
:

CERTIFICATE OF SERVICE

I, Scott C. Etter, Esquire, of Miller, Kistler, Campbell,
Miller, Williams & Benson, Inc., do hereby certify that I have
mailed a true and correct copy of the foregoing Praeclipe to Enter
Appearance in the above captioned matter to:

David J. Hopkins, Esquire
Hopkins Heltzel, LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Scott C. Etter, Esquire

Dated: November 10, 2006

CH

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

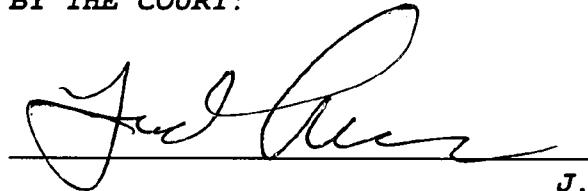
S. AND S. VENTURES, INC., :
Plaintiff :
:
vs. : No. 06-1686-C.D.
:
WALKER DEVELOPMENT SERVICES, :
LLC, :
Defendant. :
:

RULE TO SHOW CAUSE

AND NOW, this 16 day of November, 2006, a Rule is
hereby granted to show cause why Defendant's Preliminary Objections
should not be Sustained and Plaintiff's Complaint be dismissed with
prejudice.

This rule is returnable for hearing/argument on the 12th day
of January, 2007, at 3:00 o'clock 9.m., in
Room/Courtroom Number 1, Clearfield County Courthouse, 230 East
Market Street, Clearfield, Pennsylvania.

BY THE COURT:



J.

FILED
01/17/07
NOV 17 2006
2CC
Amy Evers
GW

William A. Shaw
Prothonotary/Clerk of Courts

FILED

NOV 17 2006

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

DATE: 11/17/06

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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

S. AND S. VENTURES, INC., :
Plaintiff :
:
vs. : No. 06-1686-C.D.
:
WALKER DEVELOPMENT SERVICES, :
LLC, :
Defendant. :
:

ORDER

AND NOW, to-wit, this _____ day of _____, 20____,
upon consideration of Defendant's Preliminary Objections, and oral
argument, the Preliminary Objections are **SUSTAINED**, and it is
hereby **ORDERED, ADJUDGED, and DECREED** that Plaintiff's Complaint be
and hereby is dismissed with prejudice.

BY THE COURT:

J.

CA

S. AND S. VENTURES, INC., : IN THE COURT OF COMMON PLEAS OF
Plaintiff, : CLEARFIELD COUNTY, PENNSYLVANIA
vs. : CIVIL ACTION - LAW
WALKER DEVELOPMENT SERVICES, : No. 06-1686-C.D.
LLC, :
Defendant. : **PRELIMINARY OBJECTIONS**
: Filed on behalf of: Defendant,
: Walker Development Services,
: LLC
: COUNSEL OF RECORD FOR PARTY:
: Scott C. Etter, Esquire
: PA I.D. #72789
: MILLER, KISTLER, CAMPBELL,
: MILLER, WILLIAMS & BENSON, INC.
: 720 South Atherton Street
: State College, PA 16801
: (814) 234-1500

FILED NO
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William A. Shaw
Prothonotary/Clerk of Courts

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

S. AND S. VENTURES, INC., :
Plaintiff :
:
vs. : No. 06-1686-C.D.
:
WALKER DEVELOPMENT SERVICES, :
LLC, :
Defendant. :
:

PRELIMINARY OBJECTIONS

NOW COMES Defendant, Walker Development Services, LLC ("Walker"), by and through its attorneys, Scott C. Etter, Esquire, and Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., and files these Preliminary Objections, averring in support thereof as follows:

a. **The Contract provides that the disputes must be submitted to non-binding mediation.**

1. Pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(6), preliminary objections may be filed by any party for "agreement for alternative dispute resolution." Pa.R.C.P. 1028(a)(6).

2. The contract that is attached to the Complaint and identified as Exhibit A provides in pertinent part as follows: "Any unresolved conflict, dispute or controversy shall be submitted to non-binding mediation. Exhibit A, § IV, ¶ 3.

3. Plaintiff did not submit the matter to non-binding mediation, as required by the contract.

4. Walker wishes to first proceed through non-binding mediation, as is its right under the contract.

b. Plaintiff's claims are not brought by the proper party.

5. In the alternative, pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(5), preliminary objections may be filed by any party for "lack of capacity to sue ..." Pa.R.C.P. 1028(a)(5).

6. Pursuant to 15 Pa.C.S.A. § 8905(a)(3), "[t]he name of each limited liability company ... shall ... [c]ontain the term **"company," "limited" or "limited liability company"** or an abbreviation of one of those terms. 15 Pa.C.S.A. § 8905(a)(3).

7. The Complaint identifies the purported Plaintiff as "S. and S. Ventures, Inc., a Pennsylvania Limited Liability Company ..." Complaint, ¶ 1.

8. Pursuant to the Department of State's records, the pertinent page whereof is attached hereto as Exhibit 1, there does appear to be a corporation by that name, but it is not and/or

cannot be a limited liability corporation because of the apparent violation of 15 Pa.C.S.A. § 8905(a)(3).

c. Pursuant to Kansas law, Plaintiff may not pursue a tort-based claim in a contract-based matter.

9. In the alternative, pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(4), preliminary objections may be filed by any party for "legal insufficiency of a pleading (demurrer)." Pa.R.C.P. 1028(a)(4).

10. The contract provides that "[t]his Agreement shall be governed by, and construed in accordance with, the Laws of the State of Kansas. Exhibit A, § IV, ¶ 8.

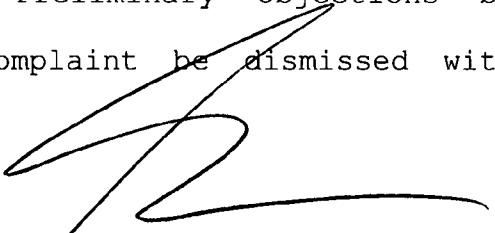
11. Pursuant to Kansas law, a negligence action is inappropriate for the recovery of purely economic losses resulting from the breach of a contract. Haysville U.S.D. No. 261 v. GAF Corporation, 666 P.2d 192, 200 (Kan. 1983).

12. In the instant case, Plaintiff's claims are exclusively for economic damages resulting from work performed pursuant to the contract.

13. The work performed by Walker was done pursuant to a written contract, and the damages alleged are purely economic damages.

14. As such, any claim that Plaintiff has against Walker is purely a breach of contract claim, and the Count for Negligence should be dismissed.

WHEREFORE, Defendant, Walker Development Services, LLC, respectfully requests that these Preliminary Objections be sustained, and that Plaintiffs' Complaint be dismissed with prejudice.

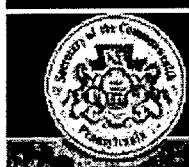


Scott C. Etter, Esquire
I.D. #72789

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
720 South Atherton Street
State College, PA 16801-4628
(814) 234-1500

Attorneys for Defendant,
Walker Development Services, LLC

Dated: November 10, 2006



PENNSYLVANIA
Department of State

Search
By Business Name
By Business Entity ID
Verify
Verify Certification

Date: 10/30/2006

**Business Entity Filing
History**

(Select the link above to view the
Business Entity's Filing History)

Business Name History

Name	Name Type
S. AND S. VENTURES, INC.	Current Name

Business Corporation - Domestic - Information

Entity Number:	3035191
Status:	Active
Entity Creation Date:	11/9/2001 9:46:49 AM
State of Business.:	PA
Registered Office Address:	No Address
Mailing Address:	No Address

Officers

Name:	UNKNOWN
Title:	President
Address:	[Address Not Available] 0 -0

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EXHIBIT

1

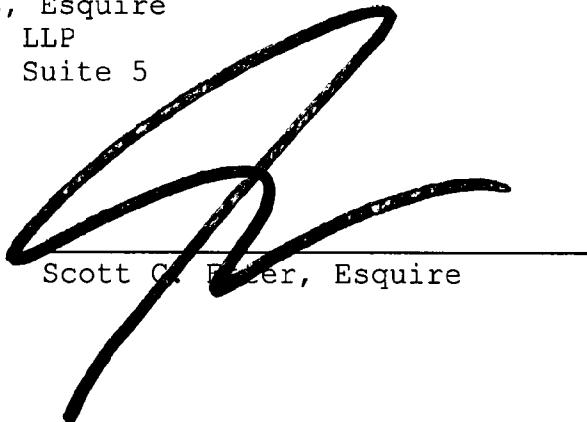
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

S. AND S. VENTURES, INC., :
Plaintiff :
:
vs. : No. 06-1686-CD
:
WALKER DEVELOPMENT SERVICES, :
LLC, :
Defendant. :
:

CERTIFICATE OF SERVICE

I, Scott C. Etter, Esquire, of Miller, Kistler, Campbell,
Miller, Williams & Benson, Inc., do hereby certify that I have
mailed a true and correct copy of the foregoing Praeclipe to Enter
Appearance in the above captioned matter to:

David J. Hopkins, Esquire
Hopkins Heltzel, LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Scott C. Etter, Esquire

Dated: November 10, 2006

S. AND S. VENTURES, INC., : IN THE COURT OF COMMON PLEAS OF
Plaintiff, : CLEARFIELD COUNTY, PENNSYLVANIA
vs. : CIVIL ACTION - LAW
: No. 06-1686-C.D.
: **NOTICE OF SERVICE**
WALKER DEVELOPMENT SERVICES, :
LLC, :
Defendant. :
: Filed on behalf of: Defendant,
: Walker Development Services,
: LLC
: COUNSEL OF RECORD FOR PARTY:
: Scott C. Etter, Esquire
: PA I.D. #72789
: MILLER, KISTLER, CAMPBELL,
: MILLER, WILLIAMS & BENSON, INC.
: 720 South Atherton Street
: State College, PA 16801
: (814) 234-1500

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William A. Shaw
Prothonotary/Clerk of Courts

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

S. AND S. VENTURES, INC., :
Plaintiff :
:
vs. : No. 06-1686-C.D.
:
WALKER DEVELOPMENT SERVICES, :
LLC, :
Defendant. :
:

NOTICE OF SERVICE

TO THE PROTHONOTARY:

PLEASE TAKE NOTICE that on the 27th day of November, 2006, the undersigned served the completed Rule to Show Cause dated November 16, 2006 on the following individual by First Class Mail at the following address:

David J. Hopkins, Esquire
Hopkins Heltzel, LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Scott C. Etter, Esquire
I.D. #72789

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
720 South Atherton Street
State College, PA 16801-4628
(814) 234-1500

Attorneys for Defendant,
Walker Development Services, LLC

Dated: November 27, 2006

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

S. AND S. VENTURES, INC., :
Plaintiff :
:
vs. : No. 06-1686-CD
:
WALKER DEVELOPMENT SERVICES, :
LLC, :
Defendant. :
:

CERTIFICATE OF SERVICE

I, Scott C. Etter, Esquire, of Miller, Kistler, Campbell,
Miller, Williams & Benson, Inc., do hereby certify that I have
mailed a true and correct copy of the foregoing Notice of Service
in the above captioned matter to:

David J. Hopkins, Esquire
Hopkins Heltzel, LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801



Scott C. Etter, Esquire

Dated: November 27, 2006

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

S & S VENTURES, INC.,

Plaintiff

vs.

WALKER DEVELOPMENT SERVICES, LLC,

Defendant

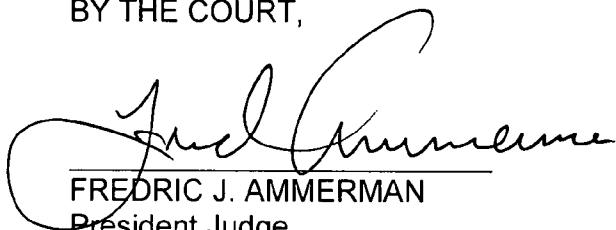
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*

No. 06-1686-CD

O R D E R

NOW, this 18th day of December, 2006, Counsel having notified the Court that the parties have agreed to proceed to private mediation and are requesting a continuance of the argument on Defendant's Preliminary Objections, it is the ORDER of this Court that the argument scheduled for January 12, 2007 at 3:00 p.m. be continued. The matter shall be re-scheduled at the request of either party.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

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Hopkins
EHer

William A. Shaw
Prothonotary/Clerk of Courts

(G)

DATE: 12/18/06

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED

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William A. Shaw
Probationary/Clerk of Courts

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

S AND S VENTURES, INC.
Plaintiff

vs. No. 2006-1686 CD

WALKER DEVELOPMENT
SERVICE, LLC.,
Defendant

Type of Pleading: Praecipe to
Discontinue

Filed on behalf of: S and S Ventures, Inc.,
Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE
Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE
Supreme Court No. 83998

CARL J. ZWICK, ESQUIRE
Supreme Court No. 306554

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

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William A. Shaw
Prothonotary/Clerk of Courts

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

S AND S VENTURES, INC.
Plaintiff

vs. : No. 2006-1686 CD

WALKER DEVELOPMENT
SERVICE, LLC.,
Defendant

PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Kindly mark the above-captioned civil action settled and discontinued.

HOPKINS HELTZEL LLP

BY: 

David J. Hopkins, Esquire
Attorney for Plaintiff
Supreme Court No. 42519
100 Meadow Lane, Suite 5
DuBois, PA 15801
(814) 375-0300