

07-501-CD  
Jim Stellabuto vs Micala Constr.

Jim Stellabuto's vs Micala Construction  
2007-501-CD

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

JIM STELLABUTO'S EVERYTHING  
UNDER FOOT, INC.,  
Plaintiff

vs.

MICALE CONSTRUCTION  
SERVICES, INC.,  
Defendants

No. 2007 - 501- C.D.

Type of Pleading: Complaint

Filed on behalf of: Jim Stellabuto's  
Everything Under Foot, Inc., Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

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

LEA ANN HELTZEL, ESQUIRE  
Attorney at Law  
Supreme Court No. 83998

100 Meadow Lane, Suite 5  
DuBois, Pennsylvania 15801

(814) 375-0300

**FILED** 1 CC Sheriff  
01111030 1 CC Atty  
MAR 30 2007  
William A. Shaw Atty pd.  
Prothonotary/Clerk of Courts 85.00

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

JIM STELLABUTO'S EVERYTHING  
UNDER FOOT, INC.,  
Plaintiff

vs.

MICALE CONSTRUCTION  
SERVICES, INC.,  
Defendant

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No. 2007

C.D.

**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 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.

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

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

JIM STELLABUTO'S EVERYTHING  
UNDER FOOT, INC.,

Plaintiff

vs.

MICALE CONSTRUCTION  
SERVICES, INC.,

Defendants

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No. 2007

C.D.

**COMPLAINT**

AND NOW, comes Plaintiff, Jim Stellabuto's Everything Under Foot, Inc., by and through its attorneys, Hopkins Heltzel LLP and says as follows:

**COUNT I - CONTRACT**

1. Plaintiff is Jim Stellabuto's Everything Under Foot, Inc., a Pennsylvania corporation, whose principal business address is 922 Beaver Drive, DuBois, Pennsylvania 15801.

2. Defendant is Micale Construction Services, Inc., a Pennsylvania corporation, whose principal business address is 416 Main Street, Kersey, Pennsylvania 15846.

3. Plaintiff is a seller of flooring and ancillary materials. Said flooring generally consists of carpeting, tile and natural or synthetic wood floors.

4. Defendant is a general contractor who in the ordinary course of business purchases flooring from Plaintiff for installation in Defendant's construction projects.

5. At all material times relevant to this Complaint, Defendant contacted Plaintiff at its DuBois, Pennsylvania location to order flooring and all payments made by Defendant to Plaintiff were made at Plaintiff's DuBois, Pennsylvania location. Therefore, venue is proper in Clearfield County.

6. On numerous occasions Defendant ordered flooring for Defendant's construction projects from Plaintiff classified herein: (1) Stoltz Toyota; (2) Michele Johnson; (3) Niagara Cutter; and (4) Kersey Senior Center.

7. The flooring products ordered by Defendant from Plaintiff are set forth on Exhibits "A" through "D":

- a. Stoltz Toyota – Exhibit "A";
- b. Michele Johnson – Exhibit "B";
- c. Niagara Cutter – Exhibit "C";
- d. Kersey Senior Center – Exhibit "D".

8. There remains an unpaid balance on each project for materials and labor the amount set forth below:

a.	Stoltz Toyota	\$11,831.46	May 24, 2005
b.	Michele Johnson	\$5,631.31	April 29, 2005
c.	Niagara Cutter	\$46.64	December 31, 2005
d.	Kersey Senior Center	\$169.45	December 31, 2006

9. In each purchase order Plaintiff presented to Defendant with the product Defendant ordered, there contained a provision for late fees of 1 1/2 percent per month that Defendant acknowledged and accepted by accepting the flooring product.

10. There remains due from Defendant late fees through January 31, 2007 and that will continue until judgment and payment as follows:

1. Stoltz Toyota \$4,103.90;
2. Michele Johnson \$1,953.35.

11. Plaintiff has made repeated demands for payment from Defendant. Defendant has acknowledged the debt but has refused to make payment.

12. Through January 31, 2007, Defendant owes Plaintiff \$23,736.11 with interest accruing at 1 1/2 percent per month until paid in full.

WHEREFORE, Plaintiff demands judgment against Defendant Micale Construction Services, Inc. in the amount of \$23,736.11 together with interest at the rate of 1.5 percent per month from February 1, 2007 through the date of judgment and thereafter together with costs of suit and such other and further relief as the Court deems fair, just and equitable.

## **COUNT II - UNJUST ENRICHMENT**

13. Plaintiff repeats each allegation of Count I as if set forth at length herein.

14. As a result of Defendant receiving flooring products from Plaintiff and installing said products in the construction projects of Defendant, Defendant has been unjustly enriched by the value of the product together with accrued finance charges.

WHEREFORE, Plaintiff demands judgment against Defendant Micale Construction Services, Inc. in the amount of \$23,736.11 together with interest at the rate of 1.5 percent per month from February 1, 2007 through the date of judgment and thereafter together with costs of suit and such other and further relief as the Court deems fair, just and equitable.

**COUNT III - QUANTUM MERUIT**

15. Plaintiff repeats each allegation of Count I as if set forth at length herein.

16. Plaintiff provided flooring to Defendant.

17. Defendant has received the benefit of Plaintiff's goods and services, the fair market value of which is \$23,736.11. Defendant has failed to pay Plaintiff. Plaintiff is entitled to recovery under the theory of quantum merit.

WHEREFORE, Plaintiff demands judgment against Defendant Micale Construction Services, Inc. in the amount of \$23,736.11 together with interest at the rate of 1.5 percent per month from February 1, 2007 through the date of judgment and thereafter together with costs of suit and such other and further relief as the Court deems fair, just and equitable.

Respectfully submitted,

HOPKINS HELTZEL LLP

By: 

David J. Hopkins, Esquire  
Attorney for Plaintiff  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

**EXHIBIT "A"**

**STOLTZ TOYOTA**



TILE  
VINYL  
CARPET  
  
HARDWOOD  
FLOORING

*Jim Stellabuto's*  
**EVERYTHING**  
**UNDER FOOT**

Residential  
Commercial  
922 Beaver Drive  
DuBois, PA 15801  
(814) 371-9432

①

Submitted To: <i>Micale Const.</i>	Home Phone: ( <i>885-8048</i> )	Date
<i>4110 Main St.</i>	Bus Phone: <i>4x 885-8406</i>	<i>12-17-05</i>
<i>Kersey, PA 15846</i>	Job Name <i>Stoltz</i>	
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/> _____		

QTY.	<i>Crossville</i> DESCRIPTION	PRICE PER	AMOUNT
<i>4752 FT</i>	<i>12x12 Color Blox</i>		
	<i>A1103 Slinky 396 ctns.</i>		
<i>1452 FT</i>	<i>12x12 Color Blox</i>		
	<i>A1117 I See The Moon 121 ctns</i>		
<i>660 FT</i>	<i>12x12 Color Blox</i>		
	<i>A1119 Night Night 55 ctns.</i>		
<i>622 LF</i>	<i>4x12 Bullnose A1103 Slinky</i>		
<i>130 LF</i>	<i>6x12 Cove A1103 Slinky</i>		
<i>50 PCS.</i>	<i>4x12 Bullnose Left Slinky</i>		
<i>50 PCS.</i>	<i>4x12 Bullnose Right Slinky</i>		
<i>2 PCS.</i>	<i>6x12 Cove Left Slinky</i>	TOTAL	<i>\$64,499.00</i>
<i>2 PCS.</i>	<i>6x12 Cove Right Slinky 1-13 Direct</i>	DEPOSIT	<i>32,500.00</i>
	<b>Total Due upon installation/Receipt of Goods</b>	BALANCE DUE	<i>31,999.00</i>

**SPECIAL ORDERS NON-REFUNDABLE - Thanks!**

*320* *OK 10820* - *16,600.00*

LATE CHARGE: If I don't pay any payment in full within 10 days after installation or receiving of goods, I shall pay a late charge of 1 1/2% of that payment. There is a \$1.00 minimum late charge for any late or partial payment DEFAULT: I will be in default if: (1) I fail, for any reason, to make any payment on time. (2) I fail to comply with any terms of this contract. (3) I sell, lease, or dispose of the goods.

Signature \_\_\_\_\_

*\$15,399.00*

Directions \_\_\_\_\_

*524* *OK 17128*

*3567.54*

*11,831.46*

Dear Customer:

We would appreciate it very much if you would inspect this installation with our carpet mechanics before they leave your home. If you find anything not to your satisfaction, please call it to the attention of the mechanics and they will take care of it before leaving. If you have any problem that cannot be taken care of right away, call our store before the mechanics depart. If you are perfectly satisfied with everything, please sign below. Signing this letter does not mean that we are not obligated to take care of any future problems that may arise.

Customer's Signature \_\_\_\_\_

**EXHIBIT**

tabbles

*A*

TILE  
VINYL  
CARPET

HARDWOOD  
FLOORING

*Jim Stellabuto's*  
**EVERYTHING**  
UNDER FOOT

Residential  
Commercial

922 Beaver Drive  
DuBois, PA 15801

(814) 371-9432

①

Submitted To: <i>Micale Const.</i>	Home Phone: ( <i>885-8048</i> )	Date
<i>417 Main St.</i>	Bus Phone: <i>FX 885-8406</i>	<i>12-17-05</i>
<i>Kersey, PA 15846</i>	Job Name <i>Stoltz</i>	
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
<i>4752 FT</i>	<i>Crossville 12x12 Color Blox</i>		
	<i>A1103 Slinky 396 ctns.</i>		
<i>1452 FT</i>	<i>12x12 Color Blox</i>		
	<i>A1117 I See The Moon 12 ctns</i>		
<i>660 FT</i>	<i>12x12 Color Blox</i>		
	<i>A1119 Night Night 55 ctns</i>		
<i>622 LF</i>	<i>4x12 Bullnose A1103 Slinky</i>		
<i>130 LF</i>	<i>6x12 Cove A1103 Slinky</i>		
<i>50 PCS.</i>	<i>4x12 Bullnose Left Slinky</i>		
<i>50 PCS.</i>	<i>4x12 Bullnose Right Slinky</i>		
<i>2 PCS.</i>	<i>6x12 Cove Left Slinky</i>	TOTAL	<i>\$64,499.00</i>
<i>2 PCS.</i>	<i>6x12 Cove Right Slinky</i>	DEPOSIT	
	Total Due upon installation/Receipt of Goods	BALANCE DUE	
SPECIAL ORDERS NON-REFUNDABLE - Thanks!			

LATE CHARGE: If I don't pay any payment in full within 10 days after installation or receiving of goods, I shall pay a late charge of 1½% of that payment. There is a \$1.00 minimum late charge for any late or partial payment. DEFAULT: I will be in default if: (1) I fail, for any reason, to make any payment on time. (2) I fail to comply with any terms of this contract. (3) I sell, lease, or dispose of the goods.

Signature \_\_\_\_\_

Directions \_\_\_\_\_

Dear Customer:

We would appreciate it very much if you would inspect this installation with our carpet mechanics before they leave your home. If you find anything not to your satisfaction, please call it to the attention of the mechanics and they will take care of it before leaving. If you have any problem that cannot be taken care of right away, call our store before the mechanics depart. If you are perfectly satisfied with everything, please sign below. Signing this letter does not mean that we are not obligated to take care of any future problems that may arise.

Customer's Signature \_\_\_\_\_

TILE  
VINYL  
CARPET

HARDWOOD  
FLOORING

*Jim Stellabuto's*  
**EVERYTHING**  
**UNDER FOOT**

Residential  
Commercial

922 Beaver Drive  
DuBois, PA 15801

(814) 371-9432

②

Submitted To: <i>Micale Const.</i>	Home Phone: ( <i>885-8048</i> )	Date
<i>417 Main St.</i>	Bus Phone: ( <i>Fx 885-8406</i> )	<i>12-17-05</i>
<i>Kersey, PA 15846</i>	Job Name <i>Stoltz</i>	
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/> _____		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
<i>700 FT</i>	<i>Crossville 3x3 Cross Colors Mosaics.</i>		
	<i>A215 Empress White - Gloss -</i>		
<i>130 LF</i>	<i>3x3 Cross Colors Mosaics.</i>		
	<i>A215 Empress White Bullnose.</i>		
<i>6 Pcs.</i>	<i>3x3 Double Bullnose A215</i>		
<i>13 FT</i>	<i>3x3 Cross Colors Mosaics</i>		
<i>men</i>	<i>A580 Oceana UPS</i>		
<i>18 FT</i>	<i>3x3 Cross Colors Mosaics</i>		
<i>women</i>	<i>481 Forest Green UPS</i>		
		TOTAL	<i>CONT</i>
		DEPOSIT	
	Total Due upon installation/Receipt of Goods	BALANCE DUE	
SPECIAL ORDERS NON-REFUNDABLE - Thanks!			

LATE CHARGE: If I don't pay any payment in full within 10 days after installation or receiving of goods, I shall pay a late charge of 1 1/2% of that payment. There is a \$1.00 minimum late charge for any late or partial payment. DEFAULT: I will be in default if: (1) I fail, for any reason, to make any payment on time. (2) I fail to comply with any terms of this contract. (3) I sell, lease, or dispose of the goods.

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TILE  
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*Jim Stellabuto's*  
**EVERYTHING**  
UNDER FOOT

Residential  
Commercial  
922 Beaver Drive  
DuBois, PA 15801  
(814) 371-9432

3

Submitted To: <i>Micale Const.</i>	Home Phone: ( <i>885-8048</i> )	Date
<i>417 Main St.</i>	Bus Phone: ( <i>885-8406</i> )	<i>12-17-05</i>
<i>Kersey, PA 15846</i>	Job Name <i>Stoltz</i>	
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed            _____		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
<i>100</i>	<i>50 lb. Durabond D-50</i>		
	<i>Flexible Thinset - Gray-</i>		
<i>9</i>	<i>3 1/2 Gal. Durabond D-2001</i>		
<i>80</i>	<i>25 lb. Sanded Durabond</i>		
	<i>DG05 Ocean Gray</i>		
<i>5</i>	<i>25 lb. Unsand Durabond</i>		
	<i>DG19 Bone</i>		
		TOTAL	<i>CONT'</i>
		DEPOSIT	
	Total Due upon installation/Receipt of Goods	BALANCE DUE	
SPECIAL ORDERS NON-REFUNDABLE - Thanks!			

LATE CHARGE: If I don't pay any payment in full within 10 days after installation or receiving of goods, I shall pay a late charge of 1 1/2% of that payment. There is a \$1.00 minimum late charge for any late or partial payment DEFAULT: I will be in default if: (1) I fail, for any reason, to make any payment on time. (2) I fail to comply with any terms of this contract. (3) I sell, lease, or dispose of the goods.

Signature \_\_\_\_\_

Directions \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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Customer's Signature \_\_\_\_\_

TILE  
VINYL  
CARPET

HARDWOOD  
FLOORING

*Jim Stellabuto's*  
**EVERYTHING**  
**UNDER FOOT**

Residential  
Commercial

922 Beaver Drive  
DuBois, PA 15801

(814) 371-9432

④

Submitted To: <i>Micale Const.</i>	Home Phone: ( <i>885-8048</i> )	Date
<i>417 Main St.</i>	Bus Phone: ( <i>Fx 885-8406</i> )	<i>12-17-05</i>
<i>Kersey, PA 15846</i>	Job Name	<i>stoltz</i>
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/> _____		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
<i>376.74</i>	<i>Interface Carpet Tile</i>		
	<i>1382402500 Mineral</i>		
	<i>4760 Gypsum</i>		
<i>2</i>	<i>4 Gal. Grid Set Adhesive</i>		
	<i>4in x 120F x 1/8in Johnsonite</i>		
	<i>Rubber 38 Pewter</i>		
<i>1320LF</i>	<i>straight Toeless Coils 11</i>		
<i>480LF</i>	<i>Cove Toe Coils 4</i>		
<i>240LF</i>	<i>4in x 120F x 1/8in Johnsonite - 2-</i>		
	<i>55 Silver Gray Cove Rubber coils</i>	TOTAL	<i>CONT</i>
		DEPOSIT	
	Total Due upon installation/Receipt of Goods	BALANCE DUE	
SPECIAL ORDERS NON-REFUNDABLE - Thanks!			

LATE CHARGE: If I don't pay any payment in full within 10 days after installation or receiving of goods, I shall pay a late charge of 1 1/2% of that payment. There is a \$1.00 minimum late charge for any late or partial payment DEFAULT: I will be in default if: (1) I fail, for any reason, to make any payment on time. (2) I fail to comply with any terms of this contract. (3) I sell, lease, or dispose of the goods.

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Directions \_\_\_\_\_

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Customer's Signature \_\_\_\_\_

TILE  
VINYL  
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HARDWOOD  
FLOORING

*Jim Stellabuto's*  
**EVERYTHING**  
**UNDER FOOT**

Residential  
Commercial

922 Beaver Drive  
DuBois, PA 15801

(814) 371-9432

5

Submitted To: <i>Micale Const.</i>	Home Phone: ( <i>1885-8048</i> )	Date
<i>417 Main St.</i>	Bus Phone: ( <i>Fx 1885-8406</i> )	<i>12-17-05</i>
<i>Kersey, PA 15846</i>	Job Name <i>Stoltz</i>	
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/>		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
700 FT	12x12 Musson Fluff Cord Tile		
	TT-12CT Bluetone 28ctns.		
2	4 Gal. Adhesive TT-390		
72 FT	16x16 KernDean DaVinci		
	CK 25 Noir. 2ctns.		
1	Gal. K91 Adhesive.		
		TOTAL	<i>CONT'</i>
		DEPOSIT	
	Total Due upon Installation/Receipt of Goods	BALANCE DUE	

**SPECIAL ORDERS NON-REFUNDABLE - Thanks!**

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Directions \_\_\_\_\_

Dear Customer:

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Customer's Signature \_\_\_\_\_

TILE  
VINYL  
CARPET

HARDWOOD  
FLOORING

*Jim Stellabuto's*  
**EVERYTHING**  
**UNDER FOOT**

Residential  
Commercial  
922 Beaver Drive  
DuBois, PA 15801  
(814) 371-9432

Submitted To: <i>Miracle Const.</i>	Home Phone: ( <i>885-8048</i> )	Date
<i>417 Main St.</i>	Bus Phone: <i>Fx 885-8406</i>	<i>12-20-05</i>
<i>Kersey, PA 15846</i>	Job Name	
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/>		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
2 rolls	6x50 Noble Seal CTS	468.-	936.00
	Crack Suppression Membrane		
1	Case 24 QTY 10.3oz Tubes		166.40
	Chem Caulk 900		
		SUB	1102.40
		Tax	66.14
		TOTAL	\$1168.54
		DEPOSIT	
	Total Due upon installation/Receipt of Goods	BALANCE DUE	
SPECIAL ORDERS NON-REFUNDABLE - Thanks!			

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Signature \_\_\_\_\_

Directions \_\_\_\_\_

Dear Customer:

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Customer's Signature \_\_\_\_\_

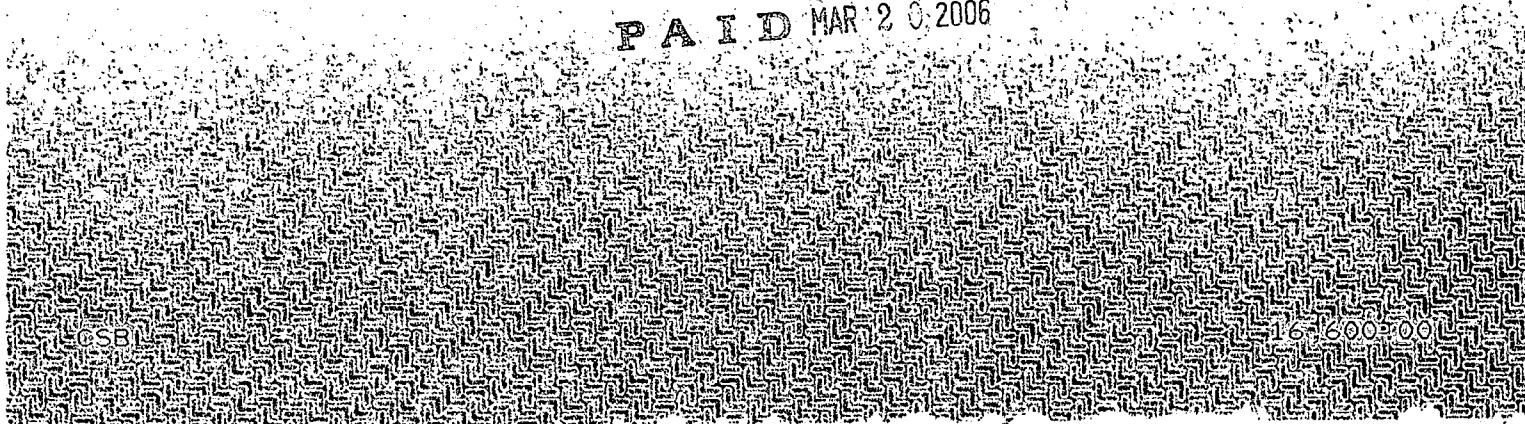
**MICALE CONSTRUCTION SERVICES, INC.**

3/17/2006 16820

Date Type Reference  
12/21/2 Bill 12-21-05

Original A Balance Du Discou Payment  
65,667.54 33,167.54 16,600.00  
Check Amou 16,600.00

PAID MAR 20 2006





**MICALE CONSTRUCTION SERVICES, INC.**

Everything Under Foot			5/22/2006			17128
Date	Type	Reference	Original A	Balance Du	Discou	Payment
10/12/2	Bill	10-12-05	90.10	90.10		90.10
10/20/2	Bill	10-20-05	68.76	68.76		68.76
12/20/2	Bill	12-20-05	1,168.54	1,168.54		1,168.54
12/21/2	Bill	12-21-05	65,667.54	16,567.54		3,567.54
1/3/200	Bill	01-03-06	60.00	60.00		60.00
1/13/20	Bill	01-13-06	1,841.00	1,841.00		1,841.00
1/13/20	Bill	01-13-06	18.62	18.62		18.62
1/17/20	Bill	01-17-06	118.00	118.00		118.00
1/18/20	Bill	01-18-06	206.57	206.57		206.57
1/31/20	Bill	01-31-06	712.00	712.00		712.00
2/22/20	Bill	02-22-06	17.00	17.00		17.00
3/10/20	Bill	03-10-06	20.00	20.00		20.00
			Check Amou			7,888.13
			PAID MAY 24 2006			7,888.13

---

**EXHIBIT “B”**

**MICHELE JOHNSON**

---

*Jim Stellabuto's*  
**EVERYTHING**  
UNDER FOOT

Submitted to: <i>Micale Constr.</i>	Home Phone: ( <i>885-8048</i> )	Date <i>12-29-04</i>
<i>416 Main St.</i>	Bus Phone: (Fx) <i>885-8406</i>	
<i>Kersey, PA 15846</i>	Job Name <i>Michelle Johnston 590-2981</i>	
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/> _____		

**LATE CHARGE:** If I don't pay any payment in full within 10 days after installation or receiving of goods, I shall pay a late charge of 1 1/2% of that payment. There is a \$1.00 minimum late charge for any late or partial payment. **DEFAULT:** I will be in default if: (1) I fail, for any reason, to make any payment on time. (2) I fail to comply with any terms of this contract. (3) I sell, lease, or dispose of the goods.

**Signature**

### Directions

Dear Customer,

We would appreciate it very much if you would inspect this installation with our carpet mechanics before they leave your home. If you find anything not to your satisfaction, please call it to the attention of the mechanics and the store before leaving. If you have any problem that cannot be taken care of right away, call our store before the mechanics leave. If you are perfectly satisfied with everything, please sign below. Signing this letter does not mean that we are responsible for any of any future problems that may arise.

Customer's Signature

EXHIBIT

R

**Residential  
Commercial**

**922 Beaver Drive  
DuBois, PA 15801**

**(814) 371-9432**

Submitted to: <u>Micale Constr.</u>	Home Phone: <u>( 885-8048</u>	Date <u>12-29-04</u>
<u>416 Main St.</u>	Bus Phone: <u>(Fx 885-8406</u>	
<u>Kersey, PA 15846</u>	Job Name <u>Michelle Johnston 590-2981</u>	
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/> _____		

TILE  
VINYL  
CARPET  
HARDWOOD  
FLOORING

*Jim Stellabuto's*  
**EVERYTHING**  
**UNDER FOOT**

Residential  
Commercial  
922 Beaver Drive  
DuBois, PA 15801  
(814) 371-9432

Submitted to: <i>Miracle Constr.</i>	Home Phone: ( <i>885-8048</i> )	Date
<i>416 Main St.</i>	Bus Phone: ( <i>FX 885-8406</i> )	<i>12-29-04</i>
<i>Kersey, PA 15846</i>	Job Name <i>Michelle Johnston</i>	<i>590-2981</i>
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/>		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
<i>171.72</i>	<i>superior 13x13 Greatstone</i>		
	<i>599.3 White lava</i>		
	<i>12ctns.</i>		
<i>1</i>	<i>25 lb. Sanded Grout</i>		
	<i>custom #382 Bone</i>		
<i>2</i>	<i>50 lb. Sturdiflex</i>		
<i>150'</i>	<i>1/4 in. CBU</i>		
<i>2</i>	<i>50 lb. Thinset</i>		
	<i>Installed - Laundry - Foyer Entrance</i>		
<i>3 pcs.</i>	<i>Schluter Reno-TK-M solid Brass</i>	TOTAL	<i>\$1707.09</i>
	<i>MTK 100 3/8 in</i>	DEPOSIT	
	Total Due upon Installation/Receipt of Goods	BALANCE DUE	
	SPECIAL ORDERS NON-REFUNDABLE - Thanks!		

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Signature \_\_\_\_\_

Directions \_\_\_\_\_

Dear Customer,

We would appreciate it very much if you would inspect this installation with our carpet mechanics before they leave your home. If you find anything not to your satisfaction, please call it to the attention of the mechanics and they will take care of it before leaving. If you have any problem that cannot be taken care of right away, call our store before the mechanics depart. If you are perfectly satisfied with everything, please sign below. Signing this letter does not mean that we are not obligated to take care of any future problems that may arise.

Customer's Signature \_\_\_\_\_

TILE  
VINYL  
CARPET  
HARDWOOD  
FLOORING

*Jim Stellabuto's*  
**EVERYTHING**  
**UNDER FOOT**

Residential  
Commercial  
922 Beaver Drive  
DuBois, PA 15801  
(814) 371-9432

Submitted to: <i>Micale Constr.</i>	Home Phone: ( <i>1885-8048</i> )	Date
<i>416 Main St</i>	Bus Phone: <i>(F) 885-8406</i>	<i>12-29-04</i>
<i>Kersey PA 15846</i>	Job Name <i>Michelle Johnston</i>	<i>590-2981</i>
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/>		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
<i>128.2</i>	<i>superior 13x13 Greatstone</i>		
	<i>5994 Desert Sand</i>		
	<i>9ctns.</i>		
<i>1 2</i>	<i>25 lb. Sanded Grout</i>		
	<i>Bonsal Honey</i>		
<i>2</i>	<i>50 lb. Sturdiflex</i>		
<i>1 pc.</i>	<i>Resin Reducer - Stock -</i>		
	<i>Installed on Concrete</i>		
	<i>Layout</i>		
	<i>Med Room - Downstairs Bath</i>		
		TOTAL	<i>\$989.00</i>
		DEPOSIT	
	Total Due upon Installation/Receipt of Goods	BALANCE DUE	
	SPECIAL ORDERS NON-REFUNDABLE - Thanks!		

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Signature \_\_\_\_\_

Directions \_\_\_\_\_

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We would appreciate it very much if you would inspect this installation with our carpet mechanics before they leave your home. If you find anything not to your satisfaction, please call it to the attention of the mechanics and they will take care of it before leaving. If you have any problem that cannot be taken care of right away, call our store before the mechanics depart. If you are perfectly satisfied with everything, please sign below. Signing this letter does not mean that we are not obligated to take care of any future problems that may arise.

*Jim* Customer's Signature \_\_\_\_\_

fnicale  
4100 main st. 46  
Kersey, PA 158  
TILE  
VINYL  
CARPET  
HARDWOOD  
FLOORING

**Jim Stellabuto's**  
**EVERYTHING**  
**UNDER FOOT**

Residential  
Commercial  
922 Beaver Drive  
DuBois, PA 15801  
(814) 371-9432

Submitted to: <u>Michele Johnston</u>	Home Phone: (    )	Date
<u>Falls Creek PA</u>	Bus Phone: <u>Cell 590 2981</u>	<u>1/4/05</u>
Job Name		
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/>		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
1	#501-205 large drawer storage		
2	#502 " 2 drawer cube		
6	#503 " single 2 shelf storage		
5	#504 " shoe storage		
1	#506 " double 2 shelf storage		
2	#507 " upright park		
3	#508 " closet rack		
2	#509 " rack shelf storage		
	Casava Maple		
			1000.00
			60.00
		TOTAL	1060.00
		DEPOSIT	
	Total Due upon Installation/Receipt of Goods	BALANCE DUE	
	SPECIAL ORDERS NON-REFUNDABLE - Thanks!		

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Signature \_\_\_\_\_

**Directions**

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Customer's Signature \_\_\_\_\_

TILE  
VINYL  
CARPET  
HARDWOOD  
FLOORING

*Jim Stellabuto's*  
**EVERYTHING**  
**UNDER FOOT**

Residential  
Commercial  
922 Beaver Drive  
DuBois, PA 15801  
(814) 371-9432

Submitted to: <i>Micale Constr.</i>	Home Phone: ( <i>885-8048</i> )	Date
<i>416 Main St.</i>	Bus Phone: ( <i>Fx 885-8406</i> )	<i>1-10-05</i>
<i>Kersey, PA 15846</i>	Job Name <i>Michelle Johnston</i>	<i>590-2981</i>
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/> _____		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
<i>200'</i>	<i>Membrane</i>		
	<i>Installed on Shower Walls.</i>		
		TOTAL	<i>\$660.00</i>
		DEPOSIT	
	Total Due upon Installation/Receipt of Goods	BALANCE DUE	
	SPECIAL ORDERS NON-REFUNDABLE - Thanks!		

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Signature \_\_\_\_\_

Directions \_\_\_\_\_

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Customer's Signature \_\_\_\_\_



Residential  
Commercial  
922 Beaver Drive  
DuBois, PA 15801  
**(814) 371-9432**

Customer's Signature

*Jim Stellabuto's*  
**EVERYTHING**  
UNDER FOOT

**(814) 371-9432**

Customer's Signature

Credit

TILE  
VINYL  
CARPET

HARDWOOD  
FLOORING

Jim Stellabuto's  
**EVERYTHING**  
UNDER FOOT

Residential  
Commercial

922 Beaver Drive  
DuBois, PA 15801

(814) 371-9432

Submitted To: <i>Micale Const.</i>	Home Phone: ( <i>885-8048</i> )	Date
<i>416 Main St.</i>	Bus Phone: ( <i>FX 885-8406</i> )	<i>1-13-06</i>
<i>Kersey, PA 15846</i>	Job Name <i>Michelle Johnston 390-2981</i>	
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/> _____		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
	<i>Credit for labor</i>		
	<i>on product received</i>		
	<i>but not installed.</i>		
<i>250 FT</i>	<i>Wood (on site) (on site)</i>	<i>2.50</i>	<i>625.00</i>
<i>90 FT</i>	<i>Tile and Underlayment</i>	<i>4.00</i>	<i>360.00</i>
<i>57 yds.</i>	<i>Carpet (still in warehouse)</i>	<i>5.00</i>	<i>285.00</i>
	<i>Credit</i>	TOTAL	<i>\$1270.00</i>
		DEPOSIT	
	Total Due upon Installation/Receipt of Goods	BALANCE DUE	
SPECIAL ORDERS NON-REFUNDABLE - Thanks!			

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Signature \_\_\_\_\_

Directions \_\_\_\_\_

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Customer's Signature \_\_\_\_\_



TILE  
VINYL  
CARPET  
HARDWOOD  
FLOORING

**Jim Stellabuto's**  
**EVERYTHING**  
**UNDER FOOT**

Master Bath ②  
Residential  
Commercial

922 Beaver Drive  
DuBois, PA 15801

(814) 371-9432

Submitted to: <i>Micale Constr.</i>	Home Phone: ( <i>885-8048</i> )	Date
<i>416 Main St</i>	Bus Phone: <i>FX 885-8406</i>	<i>12-29-04</i>
<i>Kersey, PA 15846</i>	Job Name <i>Michelle Johnston</i> <i>590-2981</i>	
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/>		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
<i>3</i>	<i>25 lb. Sanded Grout</i>		
<i>700</i>	<i>906 Cornsilk</i>		
<i>44 pcs.</i>	<i>13x13 Mosaic Sheets</i>		
	<i>Cathedral Canterbury</i>		
	<i>Mosaic Quadro 5450</i>		
<i>4</i>	<i>3 1/2 Gal. Mastic</i>		
	<i>Shower Pan Installed</i>	<i>9</i>	
	<i>Membrane - 2 Layer System</i>		
	<i>Drain (weep holes) - Mod Bed.</i>		
	<i>Labor For Installation -</i>		
	<i>All tile Installed - tub</i>		
	<i>walls and Shower</i>		
	<b>Total Due upon Installation/Receipt of Goods</b>	<b>TOTAL</b>	<i>CONV</i>
		<b>DEPOSIT</b>	
		<b>BALANCE DUE</b>	
	<b>SPECIAL ORDERS NON-REFUNDABLE - Thanks!</b>		

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Signature \_\_\_\_\_

Directions \_\_\_\_\_

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Customer's Signature \_\_\_\_\_

TILE  
VINYL  
CARPET  
HARDWOOD  
FLOORING

**Jim Stellabuto's**  
**EVERYTHING**  
**UNDER FOOT**

Master Bath ①  
Residential  
Commercial

922 Beaver Drive  
DuBois, PA 15801

(814) 371-9432

Submitted to: <u>Micale Constr.</u>	Home Phone: ( <u>1885-8048</u> )	Date
<u>416 Main St.</u>	Bus Phone: <u>EX 885-8406</u>	<u>12-29-04</u>
<u>Kersey, PA 15846</u>	Job Name <u>Michelle Johnston</u>	<u>590-</u>
<input type="checkbox"/> Cash	<input type="checkbox"/> Credit Card	<input type="checkbox"/> Check
<input type="checkbox"/> Financed	<input type="checkbox"/>	<u>2981</u>

QTY.	DESCRIPTION <u>Master Bath</u>	PRICE PER	AMOUNT
<u>408.88</u>	<u>10x13 Florida Tivoli Beige</u>		
	<u>E31010 38 cts.</u>		
<u>20 pcs.</u>	<u>10x13 Insert E31010</u>		
	<u>Blanks</u>		
<u>20 pcs.</u>	<u>2.75x2.75 Insert</u>		
	<u>E3002A Beige Colonnade</u>		
<u>96 pcs.</u>	<u>2.75x10 Liscello</u>		
	<u>E3002A Beige Colonnade</u>		
<u>7 pcs.</u>	<u>2x13 Chair Rail</u>		
	<u>E31010 Beige</u>		
<u>137 pcs.</u>	<u>3x10 Bullnose Beige</u>		
	<u>E31940</u>		
<u>10 pcs.</u>	<u>3x3 Corners - E31950 Beige</u>		
	<u>Total Due upon Installation/Receipt of Goods</u>	<b>TOTAL</b>	<u>COAT</u>
		<b>DEPOSIT</b>	
		<b>BALANCE DUE</b>	
	<b>SPECIAL ORDERS NON-REFUNDABLE - Thanks!</b>		

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Signature \_\_\_\_\_

Directions

All Installed

Dear Customer,

We would appreciate it very much if you would inspect this installation with our carpet mechanics before they leave your home. If you find anything not to your satisfaction, please call it to the attention of the mechanics and they will take care of it before leaving. If you have any problem that cannot be taken care of right away, call our store before the mechanics depart. If you are perfectly satisfied with everything, please sign below. Signing this letter does not mean that we are not obligated to take care of any future problems that may arise.

Customer's Signature [Signature]

TILE  
VINYL  
CARPET

HARDWOOD  
FLOORING

*Jim Stellabuto's*  
**EVERYTHING**  
**UNDER FOOT**

Residential  
Commercial

922 Beaver Drive  
DuBois, PA 15801

(814) 371-9432

Submitted To: <i>Micale Const</i>	Home Phone: ( ) <i>885-8048</i>	Date: <i>4-29-05</i>
<i>416 Main St.</i>	Bus Phone: ( )	
<i>Kersey PA 15846</i>	Job Name	
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/>		

DESCRIPTION	AMOUNT
<i>Payment</i>	<i>Transfer \$5000.00</i>

Thanks!

**MICALE CONSTRUCTION SERVICES, INC.**

15037

Everything Under Foot

Date	Type	Reference	Original	A Balance	Du	3/9/2005	Discou	Payment
12/29/02	Bill	12/29/04	6,229.00	6,229.00				<i>X</i> 6,229.00
12/29/02	Bill	122904	424.00	424.00				<i>X</i> 424.00
12/29/02	Bill	12-29-04	1,707.00	1,707.00				<i>X</i> 1,707.00
12/29/02	Bill	122904	989.00	989.00				<i>X</i> 989.00
12/31/02	Bill	01-04-05	2,060.00	1,060.00				<i>X</i> 1,060.00
01/10/02	Bill	01-10-05	660.00	660.00				<i>X</i> 660.00
01/17/02	Bill	01/17/05	1,653.00	1,653.00				<i>X</i> 1,653.00

**MICALE CONSTRUCTION SERVICES, INC.**

14886

*12-29-04 - \$8872.00*

*12722*

*26594*

*24594*

*500.00*

*35973.00*

*34741.68*

*1131.32*

*2005*

**EXHIBIT “C”**

**NIAGARA CUTTER**



TILE  
VINYL  
CARPET  
  
HARDWOOD  
FLOORING

*Jim Stellabuto's*  
**EVERYTHING**  
**UNDER FOOT**

Residential  
Commercial  
922 Beaver Drive  
DuBois, PA  
(814) 371-9432

Submitted To: <u>Micale Const.</u>	Home Phone: ( )	Date <u>11-18-06</u>
<u>416 Main St.</u>	Bus Phone: ( )	
<u>Kersey PA 15846</u>	Job Name <u>Niagra Cutter</u>	
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/>		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
2	10 lbs. Ardex	\$22.00	44.00
			2.64
		TOTAL	\$46.64
		DEPOSIT	
	Total Due Upon Installation/Receipt of Goods	BALANCE DUE	
SPECIAL ORDERS NON REFUNDABLE - Thanks!			

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Signature James J. J. J.

**Directions**

Dear Customer:

We would appreciate very much if you would inspect this installation with our carpet mechanics before they leave your home. If you find anything not to your satisfaction, please call it to the attention of the mechanics and they will take care of it before leaving. If you have any problem that cannot be taken care of right away, call our store before the mechanics depart. If you are perfectly satisfied with everything, please sign below. Signing this letter does not mean that we are not obligated to take care of any future problems that may arise.

Customer's Signature \_\_\_\_\_

**EXHIBIT**

tabbles

## **EXHIBIT “D”**

### **KERSEY SENIOR CENTER**

## HARDWOOD FLOORING

*Jim Stellabuto's*  
**EVERYTHING**  
**UNDER FOOT**

Residential  
Commercial  
922 Beaver Drive  
DuBois, PA  
**(814) 371-9432**

Submitted To: <u>Micale Construction</u>	Home Phone: ( <u>885-8048</u> )	Date <u>11-6-06</u>
<u>416 Main St.</u>	Bus Phone: ( <u>572-0824</u> )	
<u>Kersey, PA 15846</u>	Job Name <u>Bo</u>	
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/> _____		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
2 ctns.	4in. Vinyl Cove		
240 LFT.	Johnsonite - Black -		
		SUB.	150. <sup>94</sup>
		Tax	9. <sup>06</sup>
		TOTAL	\$160. <sup>00</sup>
		DEPOSIT	
	Total Due Upon Installation/Receipt of Goods	BALANCE DUE	
SPECIAL ORDERS NON REFUNDABLE - Thanks!			

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Signature \_\_\_\_\_

### Directions

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Customer's Signature

**EXHIBIT**

•••••

TILE  
VINYL  
CARPET  
  
HARDWOOD  
FLOORING

*Jim Stellabuto's*  
**EVERYTHING**  
**UNDER FOOT**

Residential  
Commercial  
922 Beaver Drive  
DuBois, PA

(814) 371-9432

Submitted To: <u>Micale CONST.</u>	Home Phone: ( ) <u>512-0824</u>	Date
	Bus Phone: ( )	<u>11/6/06</u>
	Job Name <u>Call BO</u>	
<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Check <input type="checkbox"/> Financed <input type="checkbox"/> <u>PO.# RASC</u>		

QTY.	DESCRIPTION	PRICE PER	AMOUNT
12'	SNAP Track	.75	9.00
	CE40A		
		TAX	.45
		TOTAL	9.45
		DEPOSIT	
	Total Due Upon Installation/Receipt of Goods	BALANCE DUE	
SPECIAL ORDERS NON REFUNDABLE - Thanks!			

LATE CHARGE: If I don't pay any payment in full within 10 days after installation or receiving of goods, I shall pay a late charge of 1 1/2% of that payment. There is a \$1.00 minimum late charge for any late or partial payment. DEFAULT: I will be in default if: (1) I fail, for any reason, to make any payment on time. (2) I fail to comply with any terms of this contract. (3) I sell, lease, or dispose of the goods.

Signature \_\_\_\_\_

**Directions**

Dear Customer:


We would appreciate very much if you would inspect this installation with our carpet mechanics before they leave your home. If you find anything not to your satisfaction, please call it to the attention of the mechanics and they will take care of it before leaving. If you have any problem that cannot be taken care of right away, call our store before the mechanics depart. If you are perfectly satisfied with everything, please sign below. Signing this letter does not mean that we are not obligated to take care of any future problems that may arise.

Customer's Signature \_\_\_\_\_

**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.

Jim Stellabuto's Everything Under Foot, Inc.

By:   
James G. Stellabuto, President

Dated: March 28, 2007

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

JIM STELLABUTO'S EVERYTHING :

UNDER FOOT, INC., :

Paintiff :

No. 2007 - 501 - C,D.

vs

MICALE CONSTRUCTION SERVICES ;

INC., :

Defendants :

Type of Pleading: ANSWER TO

COMPLAINT & COUNTER-CLAIM FILED

Counsel of Record for this party

ATTORNEY ANDREW J. WYNNE

Supreme Court No. 11352

1604 Biebel Ave.

Erie, Pa. 16509

(814) 868-1931

**FILED**

MAY 02 2007

m/10:70/

William A. Shaw

Prothonotary/Clerk of Courts

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

JIM STELLABUTO'S EVERYTHING :  
UNDER FOOT, INC., :  
Plaintiff : No. 2007 - 501- C.D.

vs

MICALE CONSTRUCTION SERVICES :  
INC., :  
Defendants :

ANSWER TO COMPLAINT & COUNTER-CLAIM FILED

I verify that the statements made in the answer to the complaint and the counter-claim are true and correct. I understand that false statements herein are made subject to the penalties of Pa. C. S. 4904, relating to unsworn falsification to authorities.

MICALE CONSTRUCTION SERVICES INC.

By: Anthony C. Micale  
Anthony C. Micale, President

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

JIM STELLBUTO's EVERYTHING :  
UNDER FOOT, INC., :  
Plaintiff :

vs

MICALE CONSTRUCTION SERVICES :  
Inc., :  
Defendants : NO. 2007 - 501 -C.D.

ANSWER TO COMPLAINT & COUNTER-CLAIM

AND, NOW, comes Micale Construction Services Inc and by  
its president, Anthony C. Micale avers as follows:

1. Admitted
2. Admitted
3. Admitted
4. Admitted

5. Admitted that orders were given by defendant to plaintiffs  
office in Dubois and payments were made by defendant to the Dubois  
office. But the work to be performed was in Jefferson, Clearfield  
and Elk Counties and subject to inspection by defendant in Elk  
county so that the venue should be Elk County and not Clearfield County.

6. Admitted that defendant supplied materials and labor on  
items (a) thru (d) listed in the complaint but in addition defendant  
entered into a contract for plaintiff installing flooring and materials  
at 120 Hickory Street, Kersey, Pa. The owner, Dennis Miller, claimed  
the flooring installed by plaintiff was defective and is withholding  
\$ 10,000.00 due defendant on the contract. Plaintiff has refused to  
correct the work he performed despite numerous requests by defendant.

7. Admitted.

8. Admitted the balances are not paid by defendant but the  
flooring installed by plaintiff for defendant on the Michele  
Johnston was defective. Michele Johnston has withheld payment to  
defendant of over \$ 100,000.00 due to the defective work of the  
plaintiff.



9. Admitted but only as to the product of plaintiff that was not defective.

10. Denied that late fees are due plaintiff since delay in any payments due plaintiff are due to plaintiffs defective product and workmanship.

11. Denied that defendant has acknowledged the debt.

12. Denied. Offsets for defective work and materials of the plaintiff may exceed the \$ 23,736.11 claimed by the plaintiff particularly if the work has to be corrected by another contractor engaged by the defendant.

#### COUNT II

13. Admitted or denied as per the answers in Count I.

14. Denied that defendant has been enriched. Defendant has suffered losses due to plaintiffs defective materials and workmanship.

#### COUNT III

15. Admitted or denied as per the answers in Count I.

16. Plaintiff provided defective flooring and workmanship to defendant resulting in damages to defendant.

17. Denied.

#### COUNTER-CLAIM

1. Plaintiff is Micale Construction Services Inc., a Pennsylvania corporation, whose principal business address is 416 Main Street, Kersey, Pa. 15845.

2. Defendant is Jim Stellabuto's Everything Under Foot Inc., a Pennsylvania corporation whose principal business address is 922 Beaver Drive, DuBois, Pennsylvania 15801.

3. Defendant is a seller of flooring and ancillary materials and installation of flooring, carpeting, tile and natural or synthetic wood floors.

4. Plaintiff is a general contractor who in the ordinary course of business purchases flooring and installation by defendant.

5. Plaintiff ordered flooring and installation of flooring at 120 Hickory Street, Kersey, Pennsylvania from defendant. Work was performed by defendant but the owner, Dennis Miller, claimed the flooring bulged and was defective and withheld \$ 10,000.00 from the contract with plaintiff. Numerous requests were made of defendant to remedy the work with no result to date.

6. Plaintiff ordered flooring and installation of flooring from defendant for a Michele Johnston. Michele Johnston claimed the flooring and installation was defective and refused to pay over \$100,000.00 on the contract Johnston had with the plaintiff. Legal action was commenced by plaintiff against Johnston but no payment has been made to date. Defendant was requested to correct the work but has not done so to date.

WHEREAS claims of plaintiff against defendant for the defective materials and workmanship in items 5 and 6 above have exceeded the \$ 23,736.11 claimed by defendant, Plaintiff is requesting a judgment in excess of the \$ 23,736.11 as will be determined by the final losses suffered by the plaintiff.

Respectfully submitted,

BY: Andrew J. Wynne 5/1/09  
Attorney Andrew J. Wynne  
Attorney for MicaleConstruction  
Services, Inc.  
1604 Biebel Ave.  
Erie, Pa. 16509

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

JIM STELLABUTO'S EVERYTHING  
UNDER FOOT, INC.,

Plaintiff

vs.

MICALE CONSTRUCTION  
SERVICES, INC.,

Defendants

No. 2007-501 C.D.

Type of Pleading: Answer to Counter-Claim  
and New Matter

Filed on behalf of: Jim Stellabuto's  
Everything Under Foot, Inc., Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE

Attorney at Law

Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE

Attorney at Law

Supreme Court No. 83998

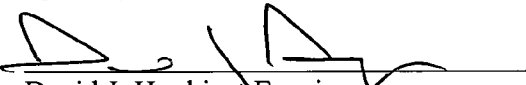
100 Meadow Lane, Suite 5

DuBois, Pennsylvania 15801

(814) 375-0300

NOTICE TO PLEAD

You are hereby notified to plead  
to the within pleading within  
twenty (20) days of service thereof  
or default judgment may be entered  
against you.

  
David J. Hopkins, Esquire

**FILED**  
O 8:30 a.m. GK  
MAY 31 2007 No CC  
William A. Shaw (GK)  
Prothonotary/Clerk of Courts

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

JIM STELLABUTO'S EVERYTHING  
UNDER FOOT, INC.,

Plaintiff

vs.

MICALE CONSTRUCTION  
SERVICES, INC.,

Defendants

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No. 2007-501 C.D.

**ANSWER TO COUNTER-CLAIM AND NEW MATTER**

AND NOW, comes Plaintiff, Jim Stellabuto's Everything Under Foot, Inc., by and through its attorneys, Hopkins Heltzel LLP and answers the Counter-Claim of Micale Construction Services, Inc. as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted in part and denied in part. Plaintiff admits installing a hardwood floor in the home of Dennis Miller. Representatives of Stellabuto and the flooring manufacturer went to the residence of Dennis Miller and determined the hardwood flooring installed in the home of Dennis Miller was not defective. Rather, there was bruising on the hardwood floors in and about the sink and island area resulting from items being dropped onto the floor. In addition thereto, there was significant damage from dragging a refrigerator across the floor. By way of further answer, the hardwood flooring installed at the home of Dennis Miller consisted of 371.52 feet and the total cost for the flooring, trim and installation was \$3,009.07.

Miller consisted of 371.52 feet and the total cost for the flooring, trim and installation was \$3,009.07.

6. Admitted in part and denied in part. Plaintiff admits installing flooring in the home of Michele Johnson. All other allegations are denied. An arbitration was held between Micale and Michele Johnson wherein an arbitrator determined the maximum liability for flooring was \$400.00. Defendant denies any flooring was defective, however in the light most favorable to Micale, Stellabuto was only responsible for \$400.00.

WHEREFORE, Jim Stellabuto's Everything Under Foot, Inc. demands judgments in its favor dismissing the Counter-Claim of Micale Construction Services, Inc. together with such other and further relief as the Court deems fair, just and equitable.

**NEW MATTER**

7. Micale's claims are barred under the theory of res judicata;

8. Micale's claims are barred by failing to give Stellabuto the opportunity to cure any defects.

9. Micale's claims fail inasmuch as neither the flooring nor the installation of flooring material was defective.

10. Micale's claims fail inasmuch as they are outside the applicable statute of limitations.

Respectfully submitted,

HOPKINS HELTZEL LLP

By: 

David J. Hopkins, Esquire  
Attorney for Plaintiff  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

**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.

Jim Stellabuto's Everything Under Foot, Inc.

By: 

James G. Stellabuto, President

Dated: 5-30-07

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

JIM STELLABUTO'S EVERYTHING  
UNDER FOOT, INC.,

Plaintiff

vs.

MICALE CONSTRUCTION  
SERVICES, INC.,

Defendants

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No. 2007-501 C.D.

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the Answer to Counter-Claim and New Matter, filed on behalf of Plaintiff, Jim Stellabuto's Everything Under Foot, Inc., was forwarded on the 30<sup>th</sup> day of May, 2007, by U.S. Mail, postage prepaid, to:

Andrew J. Wynne, Esquire  
1604 Biebel Avenue  
Erie, PA 16509



David J. Hopkins, Esquire  
Attorney for Plaintiff  
Supreme Court No. 42519

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

JIM STELLABUTO'S EVERYTHING :

UNDER FOOT, INC., :  
Plaintiff :

No. 2007 - 501 - C.D.

vs :

MICALE CONSTRUCTION SERVICES :

INC., :

Defendants :

Type of Pleading: ANSWER TO

: COUNTER CLAIM AND NEW MATTER

: COUNSEL OF RECORD for this Party

: ATTORNEY ANDREW J. WYNNE

: Supreme Court No. 11352

: 1604 Biebel Ave.

: Erie, Pa. 16509

: (814) 868-1931

FILED No cc.  
m/11.15 cm  
JUN 14 2007

William A. Shaw  
Prothonotary/Clerk of Courts



In the court of Common Pleas of Clearfield County, Pennsylvania  
(CIVIL DIVISION)

JIM STELLABUTO'S EVERYTHING UNDER FOOT, INC.,  
Plaintiff

vs

MICALE CONSTRUCTION SERVICES, INC.,  
Defendants

No. 2007 – 501 – C.D.

ANSWER TO COUNTER – CLAIM and NEW MATTER

And, now, comes Micale Construction Services Inc and by its president,  
Anthony C. Micale avers as follows:

1. Admitted
2. Admitted
3. Admitted
4. Admitted
5. Work of Plaintiff was not accepted by homeowner and to date has not repaired the defective work. Pieces of the flooring from the project are in the hands of the Defendant and the flooring is soft and not hardwood which was to be installed by the Plaintiff.
6. Denied that Plaintiff was only responsible for \$400.00, his defective work contributed to the homeowner filing bankruptcy and to date no funds have been received by Defendant.

NEW MATTER

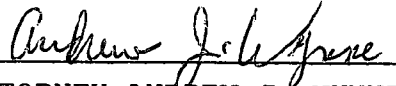
7. Denied. There was no court decision to apply res judicata. The recipients of plaintiffs work claim the work was defective and refuse to pay defendants until the work is corrected.

8. Denied. As stated in the complaint, defendant requested the plaintiff to correct the work he performed along with the homeowners requested the work be corrected before they pay defendant.

9. Denied. The homeowners claim the work was defective and refuse to pay the defendant for the completed job.

10. Denied.

Respectfully submitted,



ATTORNEY ANDREW J. WYNNE  
1604 BIEBEL AVE.  
ERIE, PA. 16509

VERIFICATION

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

Micale Construction Services Inc.

By: Anthony C. Meade

Dated: 6/11/07

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

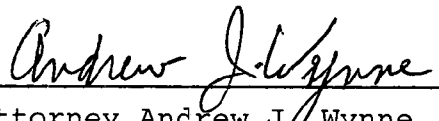
JIM STELLABUTO'S EVERYTHING :  
UNDERFOOT, INC., :  
Plaintiff :  
vs :  
MICALE CONSTRUCTION SERVICES :  
INC., :  
Defendant :

No. 2007 - 501 - C.D.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Answer to the Counter-claim and New Matter filed on behalf of Defendant, Micale Construction Services Inc., was forwarded on the 11th day June, 2007, by U.S. Mail, postage prepaid to:

Attorney David J. Hopkins,  
100 Meadow Lane, Suite 5  
DuBois, Pennsylvania 15801

  
Attorney Andrew J. Wynne  
1604 Biebel Ave.  
Erie, Pa. 16509

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102636  
NO: 07-501-CD  
SERVICE # 1 OF 1  
COMPLAINT

PLAINTIFF: JIM STELLABUTO'S EVERYTHING UNDER FOOT, IC.  
vs.  
DEFENDANT: MICALE CONSTRUCTION SERVICES, IC.

SHERIFF RETURN

NOW, April 11, 2007, SHERIFF OF ELK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON MICALE CONSTRUCTION SERVICES, INC..

NOW, April 16, 2007 AT 10:50 AM SERVED THE WITHIN COMPLAINT ON MICALE CONSTRUCTION SERVICES, INC., DEFENDANT. THE RETURN OF ELK COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

FILED

03:15 LM  
AUG 15 2007

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102636  
NO: 07-501-CD  
SERVICES 1  
COMPLAINT

PLAINTIFF: JIM STELLABUTO'S EVERYTHING UNDER FOOT, IC.  
vs.  
DEFENDANT: MICALE CONSTRUCTION SERVICES, IC.

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	HOPKINS	17441	10.00
SHERIFF HAWKINS	HOPKINS	17441	21.00
ELK CO.	HOPKINS	N/A	30.70

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2007

So Answers,



Chester A. Hawkins  
Sheriff

# Affidavit of Service

Jim Stellabuto's Everything Under  
Foot, Inc.

vs.

Micale Construction Services, Inc.

No. 501 Term, 20 07

Returnable within \_\_\_\_\_ days  
from date of service hereof.

NOW April 16, 20 07 at 10:50 o'clock A.M.

served the within Complaint on Micale Construction  
Services, Inc.

at 416 Main Street, Kersey, Elk County, PA

by handing to Anthony Micale, owner,

a true and attested copy of the original Complaint and made

known to him the contents thereof. Sheriff's Costs - \$30.70 PAID

Sworn to before me this 30th

day of April A.D. 20 07

Conder Stog

Prothonotary

Prothonotary

My Commission Expires  
January 7, 2008

So answers,

Thomas C. Ronte

Sheriff

Earl C. Pontious

Deputy



CHESTER A. HAWKINS  
SHERIFF

# Sheriff's Office Clearfield County

COURTHOUSE  
1 NORTH SECOND STREET, SUITE 116  
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986

FAX (814) 765-5915

ROBERT SNYDER  
CHIEF DEPUTY

MARILYN HAMM  
DEPT. CLERK

CYNTHIA AUGHENBAUGH  
OFFICE MANAGER

KAREN BAUGHMAN  
CLERK TYPIST

PETER F. SMITH  
SOLICITOR

## DEPUTATION

### IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 102636

JIM STELLABUTO'S EVERYTHING UNDER FOOT, IC.

TERM & NO. 07-501-CD

COMPLAINT

VS.

MICALE CONSTRUCTION SERVICES, IC.

**SERVE BY: 04/29/07**

**HEARING:**

### MAKE REFUND PAYABLE TO HOPKINS HELTZEL, LLP

**SERVE:** MICALE CONSTRUCTION SERVICES, INC.

**ADDRESS:** 416 MAIN ST., KERSEY, PA 15846

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF ELK COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, April 11, 2007.

RESPECTFULLY,

CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA



COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

07-501-C0 DATE PRESENTED 4-22-08  
CASE NUMBER TYPE TRIAL REQUESTED ESTIMATED TRIAL TIME

Date Complaint ( ) Jury (x) Non-Jury  
Filed: 3-30-07 ( ) Arbitration 1 days/hours

PLAINTIFF(S)

JIM STELLABUTO'S EVERYTHING

UNDER FOOT, INC.

DEFENDANT(S)

MICALE CONSTRUCTION

SERVICES, INC.

ADDITIONAL DEFENDANT(S)

( ) Check block if a Minor  
is a Party to the Case

( )

( )

FILED NO CC  
01:05 PM  
APR 22 2008 GK

William A. Shaw  
Prothonotary/Clerk of Courts

JURY DEMAND FILED BY:

N/A

DATE JURY DEMAND FILED:

N/A

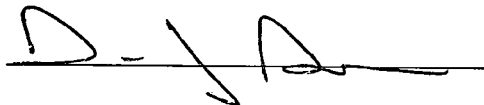
AMOUNT AT ISSUE CONSOLIDATION DATE CONSOLIDATION ORDERED  
\$23,736.11 plus accrued interest

More than

& ( ) yes (x) no

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel:



FOR THE PLAINTIFF

TELEPHONE NUMBER

David J. Hopkins, Esquire

(814) 375-0300

FOR THE DEFENDANT

TELEPHONE NUMBER

Andrew J. Wynne, Esquire

(814) 868-1931

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

CP\*

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

JIM STELLABUTO'S EVERYTHING  
UNDER FOOT, INC.

Plaintiff,

vs.

NO. 07-501-C.D.

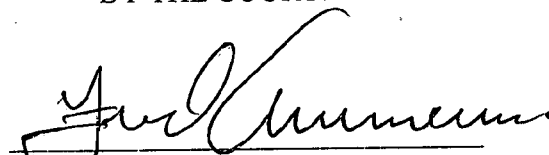
MICALE CONSTRUCTION SERVICES,  
INC.

Defendant.

**SCHEDULING ORDER**

AND NOW, this 25<sup>TH</sup> day of April 2008, it is hereby ORDERED that a Pre-Trial Conference shall be and is hereby scheduled for the **6<sup>th</sup> day of June 2008 at 2:00 o'clock P.M. in Judges Chambers** of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

  
Fredric J. Ammerman,  
President Judge

**FILED**

APR 28 2008

William A. Shaw  
Prothonotary/Clerk of Courts

rec'd Atty's:

Hopkins  
Wynne

62

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

FILED

06/28/08  
JUN 11 2008

JIM STELLABUTO'S EVERYTHING  
UNDER FOOT, INC.,

Plaintiff

vs.

MICALE CONSTRUCTION SERVICES, INC.,

Defendant

NO. 07-501-CD

William A. Shaw  
Prothonotary/Clerk of Courts

100 Arty. Hopkins  
Wynne

ORDER


NOW, this 6<sup>th</sup> day of June, 2008, following pre-trial conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Non-Jury Trial is hereby scheduled for September 10, 2008 commencing at 9:00 a.m. in Hearing Room No. 3 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. All depositions which are to be used for trial presentation purposes shall be completed by absolutely no later than ninety (90) days prior to the commencement of trial or the same will not be available for use at trial. A copy of the transcript of any such deposition(s) shall be provided to opposing counsel within no more than twenty (20) days following completion of the deposition(s).
3. The written report of any expert who will testify at trial which has not previously been provided to opposing counsel shall be delivered within no more than sixty (60) days from this date. Failure to comply will result in the witness not being available for use at trial.
4. Any party making objections relative the testimony to be provided by any witness in the form of a deposition at the time of trial shall submit said objections to the Court, in writing, no later than forty-five (45) days prior to the commencement of trial. All objections shall reference specific page and line numbers within the deposition(s)

3' in question along with that party's brief relative same. The opposing party shall file an Answer thereto and submit its brief in opposition to said objections no later than thirty (30) days prior to the commencement of trial.

5. Any party filing any Motion or Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than forty-five (45) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than thirty (30) days prior to trial.

BY THE COURT,

A handwritten signature in black ink, appearing to read "Fredric J. Ammerman", written over a horizontal line.

FREDRIC J. AMMERMAN  
President Judge

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

JIM STELLABUTO'S EVERYTHING  
UNDER FOOT, INC.,  
Plaintiff

vs.

MICALE CONSTRUCTION  
SERVICES, INC.,  
Defendants

No. 2007-501 C.D.

Type of Pleading: Praeceptum to Discontinue

Filed on behalf of: Jim Stellabuto's  
Everything Under Foot, Inc., Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

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

LEA ANN HELTZEL, ESQUIRE  
Attorney at Law  
Supreme Court No. 83998

100 Meadow Lane, Suite 5  
DuBois, Pennsylvania 15801

(814) 375-0300

**FILED**

0/11/12um  
JUL 15 2008

William A. Shaw  
Prothonotary/Clerk of Courts

ccallert  
or disc  
issued to  
Wm Hopkins  
Copy to CIA

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

JIM STELLABUTO'S EVERYTHING  
UNDER FOOT, INC.,  
Plaintiff

vs.

MICALE CONSTRUCTION  
SERVICES, INC.,  
Defendants

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No. 2007-501 C.D.


**PRAECIPE TO DISCONTINUE**

TO THE PROTHONOTARY:

Kindly mark the above captioned civil action settled and discontinued.

HOPKINS HELTZEL LLP

BY:

  
David J. Hopkins, Esquire

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

JIM STELLABUTO'S EVERYTHING  
UNDER FOOT, INC.,

Plaintiff

vs.

MICALE CONSTRUCTION  
SERVICES, INC.,

Defendants

No. 2007-501 C.D.

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the foregoing Praecipe to Discontinue, filed on behalf of the Jim Stellabuto's Everything Under Foot, Inc., was forwarded on the 15<sup>th</sup> day of July, 2008, by United States Mail, first class, postage prepaid, to all counsel of record, addressed as follows:

Andrew J. Wynne, Esquire  
1604 Biebel Avenue  
Erie, PA 16509



David J. Hopkins, Esquire  
Attorney for Plaintiff  
Supreme Court No. 42519

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

**Jim Stellabuto's Everything Under Foot, Inc.**

**Vs.**

**No. 2007-00501-CD**

**Micale Construction Services, Inc.**

COPY

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on July 15, 2008, marked:

Settled and discontinued

Record costs in the sum of \$85.00 have been paid in full by David J. Hopkins Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 15th day of July A.D. 2008.



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William A. Shaw, Prothonotary