

07-538-CD

Henry Bloomberg et al vs Thomas Bayer et al

2007-538-CD
Henry Bloomberg et al vs Thomas Bayer et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

CIVIL ACTION-LAW

HENRY BLOOMBERG and SANDRA	)	CASE NO. 2007-538-C
BLOOMBERG, Husband & Wife)	
	)	TYPE OF PLEADING:
	)	COMPLAINT
Plaintiffs,)	
	)	FILED ON BEHALF OF:
	)	PLAINTIFFS
V.)	
	)	FILED BY:
THOMAS BAYER, t/d/b/a	)	PATRICK LAVELLE, ESQ
BAYER CONTRACTING	)	PA ID# 85537
	)	25 East Park Ave.
Defendant.	)	Suite #4
	)	DuBois, PA. 15801
	)	(814) 371-2232
	)	(814) 371-4480 (Fax)

JURY TRIAL DEMANDED

FILED *(EW)*
APR 05 2007
12:30 PM
William A. Shaw
Prothonotary/Clerk of Courts
I CERT TO ATT
I CERT TO STAFF

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

HENRY BLOOMBERG and SANDRA	)	NO.
BLOOMBERG, Husband & Wife)	
)	
)	
Plaintiffs,)	
)	
)	
v.)	
)	
THOMAS BAYER, t/d/b/a)	
BAYER CONTRACTING)	
)	
)	
Defendant.)	

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint is served, by entering a written appearance personally or by an 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 an order may be entered against you by the Court without further notice for any money claimed in the Complaint requested by 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 East Market Street
Clearfield, PA 16830
(814) 765-2641

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

HENRY BLOOMBERG and SANDRA)	NO.
BLOOMBERG, Husband & Wife)	
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Plaintiffs,)	
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v.)	
)	
)	
THOMAS BAYER, t/d/b/a)	
BAYER CONTRACTING)	
)	
Defendant)	

COMPLAINT

AND NOW come Plaintiffs, **HENRY BLOOMBERG and SANDRA BLOOMBERG, husband & wife**, by and through their undersigned attorney, **PATRICK LAVELLE, ESQ.**, and files the following Complaint against the Defendant, **THOMAS BAYER, t/d/b/a BAYER CONTRACTING**, of which the following is a statement:

1. Plaintiffs are **HENRY BLOOMBERG and SANDRA BLOOMBERG**, husband and wife, adult individuals, residing at 300 West Garfield Avenue., DuBois, Clearfield County, Pennsylvania, 15801.
2. The defendant is **THOMAS BAYER, a/k/a BUGSY BAYER, t/d/b/a BAYER CONTRACTING**, an adult individual, sui juris, residing and conducting business at 1526 Home Camp Rd., Rockton, Clearfield County, Pennsylvania, 15856.
3. At all times material hereto, Plaintiffs were the owners of residential real property located at 300 West Garfield Avenue, DuBois, Clearfield County, Pennsylvania.

4. At all times material hereto, Defendant was engaged as a sole proprietor in the business of residential building and remodeling in the DuBois, Clearfield County, Pennsylvania area.

5. By contract dated May 14, 2006, the Plaintiffs did contract with Defendant to tear off old siding, replace it with insulation as underlayment, new vinyl siding, replace old shutter with new shutter, clean up of old siding and haul it away, for the price of \$4,700.00. A copy of said contract and acceptance thereof is attached hereto and marked Plaintiffs' Exhibit A.

6. The Defendant commenced work at the residence of the Plaintiffs on or about May 15, 2006.

7. The defendant failed to properly complete the work in accordance with the aforementioned contract causing the plaintiff to seek additional contractors to repair and complete the work done by the defendant.

COUNT I-BREACH OF CONTRACT

8. The Plaintiffs hereby incorporates by reference Paragraphs one (1) through seven (7) of this Complaint as if the same were fully set forth herein.

9. During the course of the performance of its contractual obligations under the contract dated May 14, 2006, between the Plaintiffs and Defendant, the Defendant did fail to perform its work in a good and workmanlike manner.

10. The failure of the Defendant to perform its services in a good and workmanlike manner was a breach of the contract dated May 14, 2006, between the Plaintiffs and Defendant.

11. Said Breach of Contract by the plaintiff resulted in the plaintiffs suffering significant loss and damage, and exposed the Plaintiffs to additional costs in order to remedy the defects in the Defendant's workmanship.

12. The defendant breached the contract in the following respects:

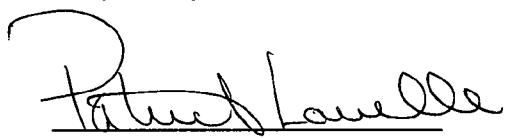
- a. The defendant failed to properly install and weather seal the siding near the roof, which resulted in the creation of roof leaks which allowed water to seep into the interior of the home causing water damage to the dining room area of plaintiffs' home;
- b. the defendant failed to properly install the siding, utilizing cut vinyl siding on the exposed seams which cracked and failed to seal;
- c. the defendant failed to properly install the siding by creating seams in the siding which faced opposite ways thereby undermining the integrity of the siding and preventing proper sealing of the siding panels against the weather;
- d. the defendant failed to properly install the siding when he failed to accurately and adequately cut the siding to allow for sealing of the siding around electrical entrance conduits, and outdoor plumbing access.
- e. the defendant failed to properly install the siding when he failed to properly utilize and/or install a j – channel finishing strip, thereby undermining the weather sealing around existing windows and doors.
- f. the defendant failed to properly install the siding when he failed to properly and/or adequately caulk those seams that were created when the defendant failed to utilize or install j-channels around the windows and doors.
- g. the defendant failed to properly install the siding when he failed to completely cover the exposed areas of the house, leaving those areas unprotected, exposed to the elements, and at risk for further water damage.

13. In addition to the foregoing, the plaintiffs have suffered consequential damages in the form of inconvenience, and the loss of the comfortable and uninhibited use of their home.

14. In addition to the foregoing, the plaintiffs have suffered consequential damages in the form of unreasonable delays in the completion of work brought about by the plaintiff's breach of the contract, causing them to be unable to utilize or otherwise enjoy their home.

THEREFORE, Plaintiffs respectfully request that this Honorable Court award damages in favor of the Plaintiffs and against the Defendant in an amount not in excess of the amount requiring mandatory arbitration.

Respectfully Submitted,



Patrick Lavelle
Patrick Lavelle, Esq.
Attorney for Plaintiffs

BAYER CONTRACTING
1526 HOME CAMP RD.
ROCKTON PA, 15856
(814)583-7364

DATE: 5-14 2005

CUSTOMER NAME: Mrs. & Mr. Hank Bloomberg

ADDRESS: W 30 Garfield Ave
DuBois, Pa 15801

PHONE # 372-2490

DESCRIPTION:

Take off of old siding, replace with insulation in
under eaves, New vinyl siding, replace old
shutters with new shutters
Clean up of old siding and haul it away.

The siding you have picked is 4" more per sq
plus the price of the shutters is \$218.82
which is a total of \$200.00 for material not
including the the installment of the shutters

TOTAL \$ 4700.00

PAYMENT AS FOLLOWS. ~~\$2~~ DOWN AND BALANCE UPON COMPLETION.
~~\$2700.00~~ - ~~\$2000.00~~

CUSTOMER SIGNATURE: _____

Pay - 5-15-04
\$2700.00 down payment.

Final payment
Pay 5-30-04
2000.00



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

HENRY BLOOMBERG and SANDRA)	NO.
BLOOMBERG, Husband & Wife)	
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Plaintiffs,)	
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v.)	
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THOMAS BAYER, t/d/b/a)	
BAYER CONTRACTING)	
)	
Defendant)	

VERIFICATION

We, **HENRY BLOOMBERG** and **SANDRA BLOOMBERG**, hereby state that we are the Plaintiffs in this action and verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. We understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 3-24-07

Henry E. Bloomberg
HENRY BLOOMBERG

Dated: 3-24-07

Sandra Bloomberg
SANDRA BLOOMBERG

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

CIVIL ACTION-LAW

HENRY BLOOMBERG and SANDRA BLOOMBERG, Husband & Wife	)	CASE NO. 538 – 2007 CD
	)	TYPE OF PLEADING:
	)	AMENDED COMPLAINT
Plaintiffs,)	
	)	FILED ON BEHALF OF:
	)	PLAINTIFFS
V.	)	FILED BY:
THOMAS BAYER, t/d/b/a BAYER CONTRACTING	)	PATRICK LAVELLE, ESQ
	)	PA ID# 85537
	)	25 East Park Ave.
Defendant.	)	Suite #4
	)	DuBois, PA. 15801
	)	(814) 371-2232
	)	(814) 371-4480 (Fax)

FILED No CC
M 11:09 AM
JUL 26 2007
GK

William A. Shaw
Prothonotary/Clerk of Courts

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

HENRY BLOOMBERG and SANDRA)	NO. 538 – 2007 CD
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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THOMAS BAYER, t/d/b/a)
BAYER CONTRACTING)
)
Defendant)

AMENDED COMPLAINT

AND NOW come Plaintiffs, **HENRY BLOOMBERG and SANDRA BLOOMBERG, husband & wife**, by and through their undersigned attorney, **PATRICK LAVELLE, ESQ.**, and files the following Amended Complaint against the Defendant, **THOMAS BAYER, t/d/b/a BAYER CONTRACTING**, of which the following is a statement:

1. Plaintiffs are **HENRY BLOOMBERG and SANDRA BLOOMBERG**, husband and wife, adult individuals, residing at 300 West Garfield Avenue., DuBois, Clearfield County, Pennsylvania, 15801.
2. The defendant is **THOMAS BAYER, a/k/a BUGSY BAYER, t/d/b/a BAYER CONTRACTING**, an adult individual, sui juris, residing and conducting business at 1526 Home Camp Rd., Rockton, Clearfield County, Pennsylvania, 15856.
3. At all times material hereto, Plaintiffs were the owners of residential real property located at 300 West Garfield Avenue, DuBois, Clearfield County, Pennsylvania.

4. At all times material hereto, Defendant was engaged as a sole proprietor in the business of residential building and remodeling in the DuBois, Clearfield County, Pennsylvania area.

5. By contract dated May 14, 2006, the Plaintiffs did contract with Defendant to remove the old siding from the plaintiff's house, replace it with insulation as underlayment and install new vinyl siding; replace the old shutters with new shutters; clean up all of the old siding and other refuse of the project and haul it away, for the price of \$4,700.00, which amount was paid by the plaintiff. (*A copy of said contract and acceptance thereof is attached hereto and marked Plaintiffs' Exhibit A*).

6. The Defendant commenced work at the residence of the Plaintiffs on or about May 15, 2006.

7. The defendant failed to properly complete the work in accordance with the aforementioned contract causing the plaintiff to seek additional contractors to repair and complete the work done by the defendant.

COUNT I-BREACH OF CONTRACT

8. The Plaintiffs hereby incorporates by reference Paragraphs one (1) through seven (7) of this Complaint as if the same were fully set forth herein.

9. During the course of the performance of its contractual obligations under the contract dated May 14, 2006, between the Plaintiffs and Defendant, the Defendant did fail to perform its work in a good and workmanlike manner.

10. The failure of the Defendant to perform its services in a good and workmanlike manner was a breach of the contract dated May 14, 2006, between the Plaintiffs and Defendant.

11. Said Breach of Contract by the plaintiff resulted in the plaintiffs suffering significant loss and damage, and exposed the Plaintiffs to additional costs in order to remedy the defects in the Defendant's workmanship.

12. The defendant breached the contract in the following respects:

- a. The Defendant failed to properly install and weather seal the siding near the roof, which resulted in the creation of roof leaks which allowed water to seep into the interior of the home causing water damage to the dining room area of plaintiffs' home;
- b. the defendant failed to properly install the siding, utilizing cut vinyl siding on the exposed seams which cracked and failed to seal;
- c. the defendant failed to properly install the siding by creating seams in the siding which faced opposite ways thereby undermining the integrity of the siding and preventing proper sealing of the siding panels against the weather;
- d. the defendant failed to properly install the siding when he failed to accurately and adequately cut the siding to allow for sealing of the siding around electrical entrance conduits, and outdoor plumbing access.
- e. the defendant failed to properly install the siding when he failed to properly utilize and/or install a j – channel finishing strip, thereby undermining the weather sealing around existing windows and doors.
- f. the defendant failed to properly install the siding when he failed to properly and/or adequately caulk those seams that were created when the defendant failed to utilize or install j-channels around the windows and doors.
- g. the defendant failed to properly install the siding when he failed to completely cover the exposed areas of the house, leaving those areas unprotected, exposed to the elements, and at risk for further water damage.

13. As a result of the said Breach of Contract, the plaintiffs have had to expend additional monies to correct and complete the project as contracted to wit:

- a. removal of siding from exterior walls;
- b. Install J-channel around all doors and windows;
- c. reinstall all siding on main walls, dormers, and gables;
- d. Cap all exterior wood on main walls not covered with siding;
- e. Seal around perimeter of siding with silicone caulking;
- f. Replace incorrectly cut siding on the home.

14. The aforementioned repairs were completed by Quality Builders of DuBois, PA. with the cost of same amounting to \$4160.00.

THEREFORE, Plaintiffs respectfully request that this Honorable Court award damages in favor of the Plaintiffs and against the Defendant in an amount not in excess of the amount requiring mandatory arbitration.

Respectfully Submitted,



Patrick Lavelle, Esq.
Attorney for Plaintiffs

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

HENRY BLOOMBERG and SANDRA BLOOMBERG, Husband & Wife) NO. 538-2007 CD
Plaintiffs,)
v.)
THOMAS BAYER, t/d/b/a)
BAYER CONTRACTING)
Defendant)

VERIFICATION

We, **HENRY BLOOMBERG and SANDRA BLOOMBERG**, hereby state that we are the Plaintiffs in this action and verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. We understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 3-24-07

Henry E. Bloomberg
HENRY BLOOMBERG

Dated: 3-24-07

Sandra Bloomberg
SANDRA BLOOMBERG

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

HENRY BLOOMBERG and SANDRA) NO. 538 – 2007 CD
BLOOMBERG, Husband & Wife)
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THOMAS BAYER, t/d/b/a)
BAYER CONTRACTING)
)
Defendant)

Certificate of Service

I, Patrick Lavelle, Esq., do hereby certify that on the 25th day of July, 2007, I served a copy of the foregoing Amended Complaint upon the defendant by mailing same via first class mail, postage prepaid to the following:

Toni M. Cherry
Gleason, Cherry and Cherry L.L.P.
P.O. Box 505
DuBois, PA. 15801-0505



Patrick Lavelle, Esq.
Counsel for the Plaintiffs

BAYER CONTRACTING
1526 HOME CAMP RD.
ROCKTON PA, 15856
(814)583-7364

DATE: 5-14 2005

CUSTOMER NAME: Mr. & Mrs. Hank Bloomberg

ADDRESS: W 30 Garfield Ave
DuBois, Pa 15801

PHONE # 372-2490

DESCRIPTION:

Take off of old siding, replace with insulation as
underlayment, new vinyl siding, replace old
shutter with new shutter
Clear up of old siding and haul it away.

The siding you have picked is 4" more per sq
plus the price of the shutter is 24.82
which is a total of 200.42 for material not
including the installation of the shutter

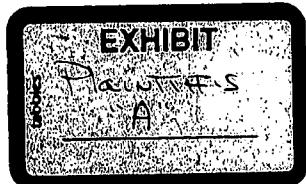
TOTAL \$ 4700.00

PAYMENT AS FOLLOWS. DOWN AND BALANCE UPON COMPLETION.
2700.00 - 2000.00

CUSTOMER SIGNATURE: _____

Pay - 5-15-04
'2700.00 down payment.

Final payment
Pay 5-30-04
2000.00



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

HENRY BLOOMBERG and SANDRA BLOOMBERG, Husband & Wife, Plaintiffs : Case No. 2007 - 538 C.D.
vs. :
THOMAS BAYER, t/d/b/a BAYER CONTRACTING, Defendant : Type of Pleading: DEFENDANT'S PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT
: Filed on Behalf of: THOMAS BAYER, t/d/b/a BAYER CONTRACTING, Defendant
: Counsel of Record for this Party:
: TONI M. CHERRY, ESQ.
: Supreme Court No.: 30205
: GLEASON, CHERRY AND CHERRY, L.L.P.
: Attorneys at Law
: P. O. Box 505
: One North Franklin Street
: DuBois, PA 15801
: (814) 371-5800

FILED *cc*
JUN 10 2007 *W.T. Cherry*
JUN 25 2007 *W.T. Cherry*
GR

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

HENRY BLOOMBERG and SANDRA	:
BLOOMBERG, Husband & Wife,	:
Plaintiffs	:
vs.	Case No. 2007 - 538 C.D.
THOMAS BAYER, t/d/b/a	:
BAYER CONTRACTING,	:
Defendant	:

O R D E R

AND NOW, this _____ day of June, 2007, Defendant, THOMAS BAYER, t/d/b/a BAYER CONTRACTING, having filed Preliminary Objections to Plaintiffs' Complaint, an argument on Preliminary Objections is hereby scheduled for the _____ day of _____, 2007, at _____ o'clock ___.M. in Courtroom No. 1 of the Clearfield County Courthouse, Second Floor, Clearfield, Pennsylvania.

BY THE COURT:

President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

HENRY BLOOMBERG and SANDRA	:
BLOOMBERG, Husband & Wife,	:
Plaintiffs	:
vs.	Case No. 2007 - 538 C.D.
THOMAS BAYER, t/d/b/a	:
BAYER CONTRACTING,	:
Defendant	:

DEFENDANT'S PRELIMINARY OBJECTIONS TO
PLAINTIFFS' COMPLAINT

Defendant, THOMAS BAYER, t/d/b/a BAYER CONTRACTING, by and through his attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., preliminarily objects to Plaintiffs' Complaint as follows:

**I. Preliminary Objection in the Form of a Motion to Strike
Demand for Jury Trial**

1. Plaintiffs filed a Complaint against the Defendant in this matter alleging, *inter alia*, injuries and damages as a result of Defendant's alleged improper completion of work under a contract for repairs totaling \$4,700.00. A true and correct copy of Plaintiffs' Complaint is attached as Exhibit "A".

2. That although Plaintiffs do not specify the amount of their damages as required by the Rules of Civil Procedure, Plaintiffs do request damages in an amount "not in excess of the amount requiring mandatory arbitration."

3. That the amount of damages obviously being claimed by the Plaintiffs is less than the amount warranting a jury trial.

WHEREFORE, Defendant respectfully requests Your Honorable Court to strike Plaintiffs' demand for jury trial.

**II. Preliminary Objection in the Form of a Motion to Strike
Pursuant to Pa. R.C.P. 1028(a)(2) for Scandalous and Impertinent Matter**

4. Plaintiffs' Complaint alleges a cause of action for breach of contract for replacement of siding, insulation and shutters as evidenced by the contract attached to Plaintiffs' Complaint as Exhibit "A".

5. That in Paragraph 7 of Plaintiffs' Complaint, Plaintiffs allege that because Defendant failed to properly complete the work in accordance with the aforementioned contract, Plaintiffs were forced to seek additional contractors to repair and complete the work done by the Defendant.

6. That the proper measure of damages in a construction contract is the excess money paid by the Plaintiffs to remedy the unworkmanlike or incomplete work allegedly performed by the Defendant.

7. That in Paragraph 13 of Plaintiffs' Complaint, Plaintiffs allege that they "have suffered consequential damages in the form of inconvenience, and the loss of the comfortable and uninhibited use of their home."

8. That in Paragraph 14 of their Complaint, Plaintiffs allege:

In addition to the foregoing, the plaintiffs have suffered consequential damages in the form of unreasonable delays in the completion of work brought about by the plaintiff's breach of the contract, causing them to be unable to utilize or otherwise enjoy their home.

9. The allegations set forth in Paragraphs 13 and 14 are irrelevant, immaterial and inappropriate to the cause of action asserted in Plaintiffs' Complaint against Defendant, are in violation of the pleading requirements of Pa.R.C.P. 1019 and, accordingly, are impertinent.

WHEREFORE, Defendant respectfully requests that Paragraphs 13 and 14 of Plaintiffs' Complaint be stricken.

III. Preliminary Objection Pursuant to Pa. R.C.P. 1028(a)(3) for Insufficient Specificity of Plaintiffs' Complaint

10. Paragraph 9 of Plaintiffs' Complaint alleges that "the Defendant did fail to perform its work in a good and workmanlike manner." and in Paragraph 10 of said Complaint, Plaintiffs allege that such failure was a breach of the contract between Plaintiffs and Defendant dated May 14, 2006.

11. Paragraph 11 of Plaintiffs' Complaint avers that this breach "by the plaintiff [sic] resulted in the plaintiffs suffering significant loss and damage, and exposed the Plaintiffs to additional costs in order to remedy the defects in the Defendant's workmanship.

12. Pa. R.C.P. 1019(f) requires that "averments of time, place and items of special damage shall be specifically stated."

13. That despite the fact that Plaintiffs allege that they were forced to incur additional costs as a result of the actions of the Defendant, Plaintiffs wholly fail to set forth such costs.

14. That in Paragraphs 13 and 14 of Plaintiffs' Complaint as previously mentioned, Plaintiffs set forth items of special damages not normally allowed in breach of contract actions and wholly fail to state with sufficient specificity the amount of those special damages alleged in Paragraphs 13 and 14 of Plaintiffs' Complaint.

15. Pa. R.C.P. 1019(a) requires that the material facts on which a cause of action is based shall be stated in a concise and summary form.

16. Plaintiffs' Complaint wholly fails to set forth the amount of damages Plaintiffs claim to have suffered and wholly fails to set forth the monies that Plaintiffs claim they were forced to spend to remedy the alleged improper work of the Defendant.

17. Plaintiffs' Complaint wholly fails to aver what repairs Plaintiffs were caused to make to their premises as a result of the alleged unworkmanlike and improper work of the Defendant.

18. Plaintiffs' Complaint lacks sufficient specificity to apprise Defendant of the issues to be litigated and the amount of damages claimed by Plaintiffs; to allow him to adequately prepare and assert defenses to Plaintiffs' allegations; and/or to identify and join any potentially responsible parties as additional defendants.

WHEREFORE, Defendant, THOMAS BAYER, t/d/b/a BAYER CONTRACTING, respectfully requests Your Honorable Court to direct Plaintiffs to file a more specific Complaint to advise the Defendant of the actual damages being claimed against him and the work that the Plaintiffs were required to have performed to remedy whatever improper work

they claim was done by the Defendant.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

John M. Cherry
Attorneys for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

CIVIL ACTION-LAW

HENRY BLOOMBERG and SANDRA BLOOMBERG, Husband & Wife)	CASE NO. 2007-538-CD
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THOMAS BAYER, t/d/b/a BAYER CONTRACTING)	PATRICK LAVELLE, ESQ
)	PA ID# 85537
)	25 East Park Ave.
Defendant.)	Suite #4
)	DuBois, PA. 15801
)	(814) 371-2232
)	(814) 371-4480 (Fax)

JURY TRIAL DEMANDED

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

APR 05 2007

Attest,

William L. Lavelle
Prothonotary/
Clerk of Courts

EXHIBIT "A"

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

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THOMAS BAYER, t/d/b/a)	
BAYER CONTRACTING)	
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Defendant)	

COMPLAINT

AND NOW come Plaintiffs, **HENRY BLOOMBERG and SANDRA BLOOMBERG, husband & wife**, by and through their undersigned attorney, **PATRICK LAVELLE, ESQ.**, and files the following Complaint against the Defendant, **THOMAS BAYER, t/d/b/a BAYER CONTRACTING**, of which the following is a statement:

1. Plaintiffs are **HENRY BLOOMBERG and SANDRA BLOOMBERG**, husband and wife, adult individuals, residing at 300 West Garfield Avenue., DuBois, Clearfield County, Pennsylvania, 15801.
2. The defendant is **THOMAS BAYER, a/k/a BUGSY BAYER, t/d/b/a BAYER CONTRACTING**, an adult individual, sui juris, residing and conducting business at 1526 Home Camp Rd., Rockton, Clearfield County, Pennsylvania, 15856.
3. At all times material hereto, Plaintiffs were the owners of residential real property located at 300 West Garfield Avenue, DuBois, Clearfield County, Pennsylvania.

4. At all times material hereto, Defendant was engaged as a sole proprietor in the business of residential building and remodeling in the DuBois, Clearfield County, Pennsylvania area.

5. By contract dated May 14, 2006, the Plaintiffs did contract with Defendant to tear off old siding, replace it with insulation as underlayment, new vinyl siding, replace old shutter with new shutter, clean up of old siding and haul it away, for the price of \$4,700.00. A copy of said contract and acceptance thereof is attached hereto and marked Plaintiffs' Exhibit A.

6. The Defendant commenced work at the residence of the Plaintiffs on or about May 15, 2006.

7. The defendant failed to properly complete the work in accordance with the aforementioned contract causing the plaintiff to seek additional contractors to repair and complete the work done by the defendant.

COUNT I-BREACH OF CONTRACT

8. The Plaintiffs hereby incorporates by reference Paragraphs one (1) through seven (7) of this Complaint as if the same were fully set forth herein.

9. During the course of the performance of its contractual obligations under the contract dated May 14, 2006, between the Plaintiffs and Defendant, the Defendant did fail to perform its work in a good and workmanlike manner.

10. The failure of the Defendant to perform its services in a good and workmanlike manner was a breach of the contract dated May 14, 2006, between the Plaintiffs and Defendant.

11. Said Breach of Contract by the plaintiff resulted in the plaintiffs suffering significant loss and damage, and exposed the Plaintiffs to additional costs in order to remedy the defects in the Defendant's workmanship.

12. The defendant breached the contract in the following respects:

- a. The defendant failed to properly install and weather seal the siding near the roof, which resulted in the creation of roof leaks which allowed water to seep into the interior of the home causing water damage to the dining room area of plaintiffs' home;
- b. the defendant failed to properly install the siding, utilizing cut vinyl siding on the exposed seams which cracked and failed to seal;
- c. the defendant failed to properly install the siding by creating seams in the siding which faced opposite ways thereby undermining the integrity of the siding and preventing proper sealing of the siding panels against the weather;
- d. the defendant failed to properly install the siding when he failed to accurately and adequately cut the siding to allow for sealing of the siding around electrical entrance conduits, and outdoor plumbing access.
- e. the defendant failed to properly install the siding when he failed to properly utilize and/or install a j – channel finishing strip, thereby undermining the weather sealing around existing windows and doors.
- f. the defendant failed to properly install the siding when he failed to properly and/or adequately caulk those seams that were created when the defendant failed to utilize or install j-channels around the windows and doors.
- g. the defendant failed to properly install the siding when he failed to completely cover the exposed areas of the house, leaving those areas unprotected, exposed to the elements, and at risk for further water damage.

13. In addition to the foregoing, the plaintiffs have suffered consequential damages in the form of inconvenience, and the loss of the comfortable and uninhibited use of their home.

14. In addition to the foregoing, the plaintiffs have suffered consequential damages in the form of unreasonable delays in the completion of work brought about by the plaintiff's breach of the contract, causing them to be unable to utilize or otherwise enjoy their home.

THEREFORE, Plaintiffs respectfully request that this Honorable Court award damages in favor of the Plaintiffs and against the Defendant in an amount not in excess of the amount requiring mandatory arbitration.

Respectfully Submitted,



Patrick Lavelle, Esq.
Attorney for Plaintiffs

BAYER CONTRACTING
1526 HOME CAMP RD.
ROCKTON PA, 15856
(814)583-7364

DATE: 5-14 2005

CUSTOMER NAME: Mr. & Mrs. Hank Bloomberg

ADDRESS: W 30 Garfield Ave
DuBois, Pa 15801

PHONE # 372-2490

DESCRIPTION:

Clean off of old siding, replace with insulation as underlayment, New vinyl siding, replace old shutters with new shutters
Clean up of old siding and haul it away.

The siding you have picked is 4" more per sq
plus the price of the shutters is \$28.82
whether enclosed at \$60.00 for material not
including the installation of the shutters

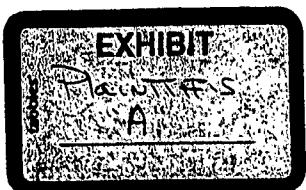
TOTAL \$ 4700.00

PAYMENT AS FOLLOWS. ~~2~~ DOWN AND BALANCE UPON COMPLETION.
2700.00 - 2000.00

CUSTOMER SIGNATURE: _____

Pay - 5-15-04
2700.00 down payment.

final payment
Pay 5-30-04
2000.00



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

HENRY BLOOMBERG and SANDRA) NO.
BLOOMBERG, Husband & Wife)
)
)
)
 Plaintiffs,)
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)
 v.)
)
)
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)
 THOMAS BAYER, t/d/b/a)
 BAYER CONTRACTING)
)
)
)
 Defendant)

VERIFICATION

We, **HENRY BLOOMBERG** and **SANDRA BLOOMBERG**, hereby state that we are the Plaintiffs in this action and verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. We understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 3-24-07

Henry E. Bloomberg
HENRY BLOOMBERG

Dated: 3-24-07

Sandra Bloomberg
SANDRA BLOOMBERG

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

HENRY BLOOMBERG and SANDRA BLOOMBERG, Husband & Wife, Plaintiffs :
vs. : Case No. 2007 - 538 C.D.
THOMAS BAYER, t/d/b/a BAYER CONTRACTING, Defendant :

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2007, a true and correct copy of Defendant's Preliminary Objections to Plaintiffs' Complaint was served upon PATRICK LAVELLE, ESQ., counsel for Plaintiffs, by mailing the same to him by United States First Class Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

PATRICK LAVELLE, ESQ.
Attorney at Law
25 East Park Avenue, Suite #4
DuBois, PA 15801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attorneys for Defendant

Dated: June 22, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102655
NO: 07-538-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: HENRY BLOOMBERG and SANDRA BLOOMBERG, Husband & wife
vs.
DEFENDANT: TOMAS BAYER t/d/b/a BAYER CONTRACTING

SHERIFF RETURN

NOW, April 30, 2007 AT 11:00 AM SERVED THE WITHIN COMPLAINT ON THOMAS BAYER t/d/b/a BAYER CONTRACTING DEFENDANT AT 1526 HOME CAMP ROAD, ROCKTON, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JIM BAYER, BROTHER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

FILED

01/31/2007
AUG 22 2007

William A. Shaw
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	LABELLE	937	10.00
SHERIFF HAWKINS	LABELLE	937	43.61

Sworn to Before Me This

____ Day of _____ 2007

So Answers,

*Chester A. Hawkins
by Maury Hamer*

Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

CIVIL ACTION-LAW

HENRY BLOOMBERG and SANDRA BLOOMBERG, Husband & Wife	)	CASE NO. 538 – 2007 CD
	)	TYPE OF PLEADING:
	)	10 Day Notice of Intent to Take
	)	Default Judgment
Plaintiffs,)	
)	
	)	FILED ON BEHALF OF:
	)	PLAINTIFFS
v.)	
	)	FILED BY:
THOMAS BAYER, t/d/b/a BAYER CONTRACTING	)	PATRICK LAVELLE, ESQ
	)	PA ID# 85537
	)	25 East Park Ave.
	)	Suite #4
Defendant.	)	DuBois, PA. 15801
	)	(814) 371-2232
	)	(814) 371-4480 (Fax)

FILED NO CC
10:55 AM
DEC 03 2007
(6K)

William A. Shaw
Prothonotary/Clerk of Courts

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

HENRY BLOOMBERG and SANDRA	)	NO. 538 – 2007 CD
BLOOMBERG, Husband & Wife)	
)	
)	
Plaintiffs,)	
)	
)	
)	
v.)	
)	
)	
THOMAS BAYER, t/d/b/a)	
BAYER CONTRACTING)	
)	
)	
Defendant.)	

To: Thomas Bayer, t/d/b/a
Bayer Contracting

Date of Notice: November 29, 2007

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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

Respectfully Submitted,



Patrick Lavelle
Patrick Lavelle, Esq.
Counsel for the Plaintiffs

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

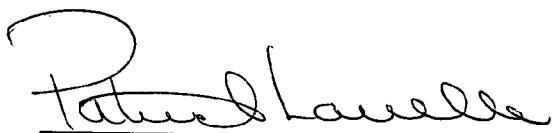
HENRY BLOOMBERG and SANDRA BLOOMBERG, Husband & Wife	)	NO. 538 - 2007 CD
)	
)	
Plaintiffs,)	
)	
)	
v.)	
)	
THOMAS BAYER, t/d/b/a BAYER CONTRACTING)	
)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

I, PATRICK LAVELLE, ESQ., by my signature appearing below, do hereby certify that on the 30TH day of NOVEMBER, 2007, I served a copy of the foregoing Ten Day Notice of Intent to Take Default Judgment, by mailing same via first class mail postage prepaid to the following:

Thomas Bayer
Bayer Construction
1526 Home Camp Rd.
Rockton, PA. 15856

Toni M. Cherry, Esq.
Gleason, Cherry & Cherry LLP
1 North Franklin St.
DuBois, PA. 15801



Patrick Lavelle, Esq.

FILED

DEC 10 2007

013-30169

William A. Shaw
Prothonotary/Clerk of Courts

6K

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

3 court to Att

CIVIL ACTION - LAW

HENRY BLOOMBERG and SANDRA BLOOMBERG, husband and wife, Plaintiffs : No. 538 - 2007 C.D.
vs. :
THOMAS BAYER, t/d/b/a BAYER CONTRACTING, Defendant : Type of Case: CIVIL
: Type of Pleading: ANSWER AND NEW
: NEW MATTER
: Filed on Behalf of: THOMAS BAYER, t/d/b/a
: BAYER CONTRACTING, Defendant
: Counsel of Record for this Party:
: TONI M. CHERRY, ESQ.
: Supreme Court No.: 30205
: GLEASON, CHERRY AND
: CHERRY, L.L.P.
: Attorneys at Law
: P. O. Box 505
: One North Franklin Street
: DuBois, PA 15801
: (814) 371-5800

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

HENRY BLOOMBERG and SANDRA	:
BLOOMBERG, husband and wife,	:
Plaintiffs	:
	: No. 538 - 2007 C.D.
vs.	:
	:
THOMAS BAYER, t/d/b/a	:
BAYER CONTRACTING,	:
Defendant	:

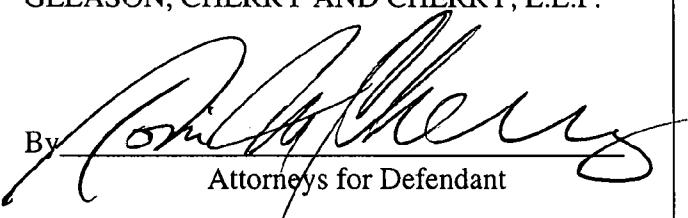
NOTICE TO PLEAD

To The Within Plaintiffs:

YOU ARE HEREBY NOTIFIED TO
PLEAD TO THE WITHIN NEW MATTER
WITHIN TWENTY (20) DAYS FROM THE
DATE OF SERVICE HEREOF.

GLEASON, CHERRY AND CHERRY, L.L.P.

By


John D. Cherry
Attorneys for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

HENRY BLOOMBERG and SANDRA BLOOMBERG, husband and wife, Plaintiffs :
vs. : No. 538 - 2007 C.D.
THOMAS BAYER, t/d/b/a BAYER CONTRACTING, Defendant :

ANSWER TO AMENDED COMPLAINT

AND NOW, comes the Defendant, THOMAS BAYER, t/d/b/a BAYER CONTRACTING, by and through his attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and answers the Amended Complaint filed by Plaintiffs as follows:

1. ADMITTED.

2. ADMITTED.

3 ADMITTED.

4. ADMITTED.

5. ADMITTED.

6. ADMITTED.

7. DENIED. On the contrary, Defendant properly completed all work required of him by the contract attached to Plaintiffs' Complaint as Exhibit "A" and Plaintiffs pronounced the Defendant's work to be satisfactory prior to paying Defendant the balance owing to him in the amount of \$2,000.00 on May 30, 2006.

COUNT I - BREACH OF CONTRACT

8. Defendant incorporates herein by reference the averments contained in Paragraphs 1 through 7 inclusive of this Answer as if the same were set forth at length herein.

9. DENIED. All of the work required to be done by the Defendant under the terms of the contract entered into between the Plaintiffs and Defendant was completed by Defendant in a good and workmanlike manner. Plaintiffs obviously concurred that the work was completed in a good and workmanlike manner and evidenced their satisfaction with all work performed by Defendant by paying him the balance owed to him under the contract on May 30, 2006, after they had a full and complete opportunity to examine the same.

10. DENIED. At no time did Defendant fail to perform the work required of him under the contract in a good and workmanlike manner. As a result, there was no breach of the contract signed by the parties on May 14, 2006, as evidenced by the fact that Plaintiffs paid Defendant the balance owing under said contract on May 30, 2006.

11. DENIED. There was no breach of contract by the Defendant which would have caused any loss or damage by Plaintiff nor did anything done by Defendant in his performance of the terms of the contract between the parties cause the Plaintiffs to suffer any additional costs because there were no defects in the Defendant's workmanship. On the contrary, any additional costs incurred by the Plaintiffs resulted solely because the Plaintiffs wanted additional work done and another method of construction for which they had never contracted with the Defendant. As a result, those increased costs resulting from changes in the method and manner of the construction that occurred after Defendant completed the job for Plaintiffs are not the responsibility of the Defendant.

12. DENIED. The Defendant did not breach the contract entered into between the parties either generally or in the following respects as alleged by Plaintiffs:

a. DENIED. The Defendant properly installed and sealed the siding near the roof in accordance with manufacturer's instructions and industry standards. Any water damage suffered by the Plaintiffs was the result of the fact that the Plaintiffs' house has no overhangs and water and the elements continuously beat on the siding and windows. The Plaintiffs' home previously suffered water damage before the Defendant sided the same as a result of the pre-existing condition of there being no overhangs and, as a result, Plaintiffs had to have a new gutter installed and had to have flashing installed along the dormer to remedy the leaking problem, none of which would have been caused by the siding job performed by Defendant;

b. DENIED. On the contrary, Defendant properly installed the siding in accordance with manufacturer's instructions and industry standards. The siding was obviously correctly cut as it was re-used by the Plaintiffs when they had additional work done by another contractor;

c. DENIED. Defendant offset the seams of the siding as required by the manufacturer's instructions and also in accordance with industry standards. There was no water damage to Plaintiffs' home caused by any action or inaction of the Defendant. On the contrary, the water damage suffered by the Plaintiffs occurred solely as a result of the fact that there are no overhangs in Plaintiffs' house, allowing the dormer joints to be unprotected from the elements which led to leakage occurring in those areas;

d. DENIED. Defendant properly cut the siding around pipes and put a boot over those pipes so that siding could be slipped in behind the boot as required by industry

standards and ran a j-channel around the electrical box as required by industry standards and manufacturer's instructions for the installation of the siding around electrical entrance conduits and outdoor plumbing pipes;

e. DENIED. The contract entered into between the parties did not call for the installation of new j-channels. On the contrary, Plaintiffs wanted to complete the job as cheaply as possible and, as a result, Defendant was to re-use the j-channels already around the windows and the window caps already in place. Defendant properly caulked the siding around windows and doors after installing the siding as required by the terms of the contract and industry standards. There was already a metal flashing around the windows and doors and it was agreed that the metal flashing was to be used in the project as evidenced by the fact that Defendant's contract with the Plaintiffs does not call for the installation of new j-channels or new caps.

f. DENIED. The Plaintiffs' contract with Defendant does not call for the installation of new j-channels. On the contrary, the Defendant used the j-channels already in place around windows and doors and did properly caulk the areas in accordance with industry standards. Plaintiffs know that the areas of leakage that they claimed did not come from the installation of siding by Defendant but came from the areas where the dormer joined the house and resulted from the fact that there are no overhangs in this house. As a result, what was done to remedy Plaintiffs' problem required the installation of a new gutter and the installation of aluminum flashing on the dormer, none of which was as a result of any work done by Defendant as evidenced by the language of Defendant's contract with Plaintiffs;

g. DENIED. The Plaintiffs' contract with Defendant does not call for the installation of new j-channels. On the contrary, the Defendant used the j-channels already in place around windows and doors and did properly caulk the areas in accordance with industry standards. Plaintiffs know that the areas of leakage that they claimed did not come from the installation of siding by Defendant but came from the areas where the dormer joined the house and resulted from the fact that there are no overhangs in this house. As a result, what was done to remedy Plaintiffs' problem required the installation of a new gutter and the installation of aluminum flashing on the dormer, none of which was as a result of any work done by Defendant as evidenced by the language of Defendant's contract with Plaintiffs.

There were no areas of the house left unprotected when Defendant finished the job as evidenced by the fact that Plaintiffs pronounced the job to be complete and satisfactory to them and, as a result, they issued payment for the balance due and owing under the contract to Defendant on May 30, 2006. Their attempt to claim that Defendant caused the leaks that they suffered ignored the fact that Defendant was not required to install a gutter and was not requested to put flashing on the dormer. Those actions were done by Plaintiffs later in an effort to correct an on-going leakage problem that they and their predecessors in title have had due to the particular construction of this house where there are no overhangs.

13. DENIED. At no time did Defendant breach the terms of the contract he had with Plaintiffs that appears as Exhibit "A" of Plaintiffs' Complaint. On the contrary, Defendant performed all work he was required to perform under the contract in a good and workmanlike manner. Defendant was not required to install new j-channels as evidenced by the fact that no such requirement exists in the contract attached to Plaintiffs' Complaint as Exhibit "A".

14. DENIED. There were no repairs done by Quality Builders on the leakage that Plaintiffs claim to have suffered for which the Plaintiffs have not been fully compensated by the Defendant even though Defendant denies any liability for such water problem. On the contrary, the water problem suffered by the Plaintiffs arises solely out of the fact that Plaintiffs' house is constructed without overhangs and Plaintiffs and their predecessor in title repeatedly suffered water damage as a result of such peculiar construction. Quality Builders of DuBois were required to install a new gutter and to put aluminum flashing along the dormer in order to correct a water problem that Plaintiffs suffered as a result of the poor construction of their home. Those elements, although paid for by Defendant, through his insurance carrier, were not caused by the actions of the Defendant but resulted solely from the construction of Plaintiffs' home as evidenced by the fact that Plaintiffs continued to have leakage problems after Quality Builders re-sided their home using new j-channels as requested by Plaintiffs.

WHEREFORE, Defendant respectfully requests Your Honorable Court to dismiss Plaintiffs' Complaint and enter judgment in favor of Defendant and against Plaintiffs.

NEW MATTER

15. Defendant incorporates herein by reference the averments contained in Paragraphs 1 through 14 inclusive of the foregoing Answer as if the same were set forth at length herein.

16. As alleged in the Complaint, Plaintiffs and Defendant on May 14, 2006, entered into an agreement, which agreement was intended to specify the rights and obligations of Plaintiffs and Defendant regarding the work that was to be done by the Defendant for the Plaintiffs.

17. That Defendant subsequently performed all of the work required under the contract of May 14, 2006, to the complete satisfaction of the Plaintiffs as evidenced by the fact that the Plaintiffs pronounced Defendant's work to be satisfactory and did issue a final payment to him on May 30, 2006.

18. Thereafter, after Defendant fully completed all work required of him under the contract of May 14, 2006, Plaintiffs elected to have their home re-sided and they wanted new j-channels installed which was done by a third-party contractor.

19. After such installation was completed by the third-party contractor and Plaintiffs' home was re-sided, Plaintiffs reported water leaks in their home which were eventually fixed by the third-party contractor through the installation of a new gutter and the step-flashing of the dormer on Plaintiffs' home.

20. Despite the fact that Defendant denied any responsibility for causing the water leaks complained of by Plaintiffs, the parties entered into an agreement whereby Defendant's insurance carrier paid for all water damage suffered by the Plaintiffs.

21. That Plaintiffs accepted the payment from Defendant, through his insurance carrier, of the money offered to pay the damages suffered by the Plaintiffs.

22. Plaintiffs' instant cause of action is based upon and seeks damages for Defendant's alleged violation of the initial construction contract entered into between the parties.

23. By entering into the subsequent agreement accepting money from Defendant's insurance carrier for payment of any damages allegedly suffered by the Plaintiffs as a result of Defendant's performance of the initial contract, Plaintiffs had substituted a new agreement for the former contract and their subsequent agreement serves as an accord to the initial agreement.

24. Defendant's performance under the subsequent agreement which resulted from the payment of money by his insurance carrier and Plaintiffs' acceptance of the same serves as a satisfaction to this accord, with such accord and satisfaction now serving as a bar to Plaintiffs' alleged cause of action.

25. Plaintiffs settled all claims they may have had against Defendant as a result of the contract entered into between the parties on May 14, 2006, and Plaintiffs are now estopped from bringing further claims against Defendant.

26. Plaintiffs' cause of action against Defendant are barred by the defense of estoppel.

27. Plaintiffs' Complaint seeks to recover money damages against Defendant as a result of a contract entered into between the parties on May 14, 2006.

28. Defendant has previously paid Plaintiffs for damages they claim they suffered as a result of Defendant's performance of the contract of May 14, 2006.

29. Plaintiffs accepted that payment in full satisfaction of the water damage they claim to have suffered as a result of Defendant's performance of the contract of May 14, 2006.

30. Because Defendant has tendered and made full payment to Plaintiffs on the obligation and contract alleged in Plaintiffs' Complaint, Plaintiffs' action is barred by the defense of payment.

31. As a result of Defendant's full payment of all water damages suffered by the Plaintiffs, Plaintiffs release Defendant from any and all liability on this cause of action.

32. In consideration of Plaintiffs' release, Defendant caused the full amount of the water damage suffered by Plaintiffs to be paid to them and Plaintiffs did accept such sum and used

the sum to pay a third contractor for the repair of the water damage they claimed to be caused by the Defendant.

33. Plaintiffs have previously released and received consideration from Defendant on the cause of action on which the Complaint is based and, as a result, they are barred from here recovering further against Defendant.

34. Plaintiffs' cause of action is barred by the defense of release.

35. That for all of the foregoing reasons, incorporated herein as if set forth at length in this paragraph, Plaintiffs' cause of action is barred by the defense of waiver.

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

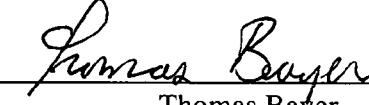
Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By 
Attorney for Defendant

VERIFICATION

I, THOMAS BAYER, Defendant herein, verify that the statements made in the foregoing Answer and New Matter 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.



Thomas Bayer

Dated: December 10, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

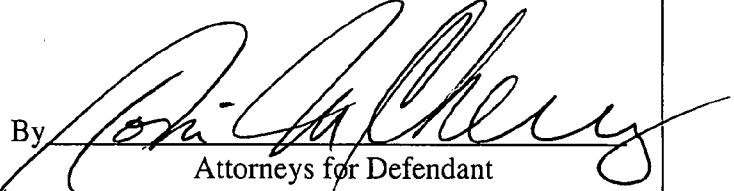
HENRY BLOOMBERG and SANDRA BLOOMBERG, husband and wife,	Plaintiffs	:	
			No. 538 - 2007 C.D.
vs.		:	
THOMAS BAYER, t/d/b/a BAYER CONTRACTING,	Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of December, 2007, a true and correct copy of the Answer and New Matter filed on behalf of Defendant was served upon PATRICK LAVELLE, ESQ., counsel for Plaintiffs, by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

PATRICK LAVELLE, ESQ.
Attorney at Law
25 East Park Avenue, Suite #4
DuBois, PA 15801

GLEASON, CHERRY AND CHERRY, L.L.P.

By 
Attorneys for Defendant

Dated: December 10, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

FILED

FEB 05 2008

112:10/11
William A. Shaw
Prothonotary/Clerk of Courts
GK

HENRY BLOOMBERG and SANDRA
BLOOMBERG, Husband & Wife

) **CASE NO.** 538 - 2007 CD

1 cent to 1000

Plaintiffs,

) **TYPE OF PLEADING:**
RESPONSE TO NEW MATTER

v.

THOMAS BAYER, t/d/b/a
BAYER CONTRACTING

) **FILED ON BEHALF OF:**
PLAINTIFFS

Defendant.

) **FILED BY:**

) PATRICK LAVELLE, ESQ
PA ID# 85537
25 East Park Ave.
Suite #4
DuBois, PA. 15801
(814) 371-2232
(814) 371-4480 (Fax)

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

HENRY BLOOMBERG and SANDRA BLOOMBERG, Husband & Wife	)	NO. 538 – 2007 CD
)	
)	
Plaintiffs,)	
)	
)	
v.)	
)	
THOMAS BAYER, t/d/b/a BAYER CONTRACTING)	
)	
)	
Defendant.)	

RESPONSE TO NEW MATTER

AND NOW come the plaintiffs, HENRY BLOOMBERG & SANDRA BLOOMBERG, husband and wife, by and through their attorney, PATRICK LAVELLE, ESQ., and files the within stated Response to New Matter, averments in support of which are as follows:

16. This paragraph requires no response as it merely reiterates facts set forth in a previous pleading.

17. The averments of paragraph seventeen (17) are admitted in part and denied in part. It is admitted that the contractor indicated to the plaintiffs that the job was complete, and that the plaintiffs paid the invoice to the defendant. It is denied however that the plaintiffs pronounced the work done as satisfactory. By way of further response plaintiffs have previously averred that work done by the defendant was not satisfactory, and further aver that the defendant failed to return and correct those deficiencies that had been identified.

18. The averments of paragraph eighteen (18) are admitted in part and denied in part. It is true that the defendants proceeded to employ a subsequent contractor to correct the problems with the siding, however the use of j-channel in a siding project is necessary to a proper installation and defendants failure to do so is not related to any contract provision but is evidence of unworkmanlike performance.

19. The averments of paragraph nineteen (19) are admitted in part and denied in part. It is true that the defendants proceeded to employ a subsequent contractor to correct the problems with water leaks, however the lack of proper installation of flashing and/or gutters by the defendant was the cause of such leaking, and defendants failure to do engage in such a proper installation is not related to any contract provision but is evidence of unworkmanlike performance.

20. The averments of paragraph twenty are improper and are therefore denied. The availability of insurance to cover damages is inadmissible in this case pursuant to the collateral source rule of evidence.

21. The averments of paragraph twenty-one (21) are denied. The defendant hereby incorporates his response to paragraph twenty (20) the same as though set forth fully herein.

22. The averments of paragraph twenty-two (22) are denied. By way of further response, plaintiffs' cause of action is clearly set forth by the pleadings contained in the plaintiffs' amended complaint.

23. The averments of paragraph twenty-three (23) are denied. By way of further response the plaintiffs' did not enter into any subsequent agreement with the defendant as to the damages incurred due to the defendant's breach of the original contract. Further, there has been no action in this case that can be viewed as a compromise or release of plaintiffs' claim. If in fact the defendant has paid money to the plaintiff for

damages, it can amount to nothing more than a credit to the defendant against any judgment subsequently entered in this case.

24. The averments of paragraph twenty-four (24) are denied. By way of further response the plaintiffs' did not enter into any subsequent agreement with the defendant as to the damages incurred due to the defendant's breach of the original contract. Further, there has been no action in this case that can be viewed as a compromise or release of plaintiffs' claim. If in fact the defendant has paid money to the plaintiff for damages, it can amount to nothing more than a credit to the defendant against any judgment subsequently entered in this case.

25. The averments of paragraph twenty-five (25) are denied. By way of further response the plaintiffs' did not enter into any subsequent agreement with the defendant as to the damages incurred due to the defendant's breach of the original contract. Further, there has been no action in this case that can be viewed as a compromise or release of plaintiffs' claim. If in fact the defendant has paid money to the plaintiff for damages, it can amount to nothing more than a credit to the defendant against any judgment subsequently entered in this case.

26. Paragraph twenty-six requires no response as defendant has plead the defense of estoppel in the previous paragraph. By way of further response, The averments of paragraph twenty-six (26) are denied. The plaintiffs' did not enter into any subsequent agreement with the defendant as to the damages incurred due to the defendant's breach of the original contract. Further, there has been no action in this case that can be viewed as a compromise or release of plaintiffs' claim. If in fact the defendant has paid money to the plaintiff for damages, it can amount to nothing more than a credit to the defendant against any judgment subsequently entered in this case.

27. Paragraph twenty-seven (27) requires no response as it merely reiterates facts contained in previous pleadings.

28. Paragraph twenty-eight (28) requires no response as it merely reiterates facts contained in previous pleadings.

29. Paragraph twenty-nine (29) requires no response as it merely reiterates facts contained in previous pleadings.

30. The averments of paragraph thirty (30) are denied. By way of further response the plaintiffs' did not enter into any subsequent agreement with the defendant as to the damages incurred due to the defendant's breach of the original contract. Further, there has been no action in this case that can be viewed as a compromise or release of plaintiffs' claim based upon payment. If in fact the defendant has paid money to the plaintiff for damages, it can amount to nothing more than a credit to the defendant against any judgment subsequently entered in this case.

31. The averments of paragraph thirty-one (31) are denied. By way of further response the plaintiffs' did not enter into any subsequent agreement with the defendant as to the damages incurred due to the defendant's breach of the original contract. Further, there has been no action in this case that can be viewed as a compromise or release of plaintiffs' claim. If in fact the defendant has paid money to the plaintiff for damages, it can amount to nothing more than a credit to the defendant against any judgment subsequently entered in this case.

32. The averments of paragraph thirty-two (32) are denied. By way of further response the plaintiffs' did not enter into any subsequent agreement with the defendant as to the damages incurred due to the defendant's breach of the original contract. Further, there has been no action in this case that can be viewed as a compromise or release of plaintiffs' claim. If in fact the defendant has paid money to the plaintiff for damages, it can amount to nothing more than a credit to the defendant against any judgment subsequently entered in this case.

33. The averments of paragraph thirty-three (33) are denied. By way of further response the plaintiffs' did not enter into any subsequent agreement with the defendant as to the damages incurred due to the defendant's breach of the original contract. Further, there has been no action in this case that can be viewed as a compromise or release of plaintiffs' claim. If in fact the defendant has paid money to the plaintiff for damages, it can amount to nothing more than a credit to the defendant against any judgment subsequently entered in this case.

34. The averments of paragraph thirty-four (34) are denied. By way of further response the plaintiffs' did not enter into any subsequent agreement with the defendant as to the damages incurred due to the defendant's breach of the original contract. Further, there has been no action in this case that can be viewed as a compromise or release of plaintiffs' claim. If in fact the defendant has paid money to the plaintiff for damages, it can amount to nothing more than a credit to the defendant against any judgment subsequently entered in this case.

35. The averments of paragraph thirty-five (35) are denied. By way of further response the plaintiffs' did not enter into any subsequent agreement with the defendant as to the damages incurred due to the defendant's breach of the original contract. Further, there has been no action in this case that can be viewed as a compromise or release of plaintiffs' claim. If in fact the defendant has paid money to the plaintiff for damages, it can amount to nothing more than a credit to the defendant against any judgment subsequently entered in this case.

WHEREFORE plaintiffs pray that this Honorable Court will dismiss the new matter defenses of the defendant and enter judgment in favor of plaintiffs.

Respectfully Submitted,



Patrick Lavelle, Esq.
Counsel for the Plaintiffs

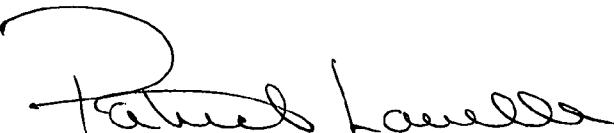
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

HENRY BLOOMBERG and SANDRA	)	NO. 538 - 2007 CD
BLOOMBERG, Husband & Wife)	
)	
)	
Plaintiffs,)	
)	
)	
v.)	
)	
THOMAS BAYER, t/d/b/a)	
BAYER CONTRACTING)	
)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

I, Patrick Lavelle, Esq., do hereby certify that on the 4TH day of February, 2008, I served a copy of the foregoing Response to New Matter upon the defendant by mailing same via first class mail, postage prepaid to the following:

Attorney Toni M. Cherry
Gleason, Cherry and Cherry L.L.P.
P.O. Box 505
DuBois, PA. 15801-0505



Patrick Lavelle, Esq.
Counsel for the Plaintiffs

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

FILED

SEP 11 2008

2008-11-11 11:55 AM
William A. Shaw
Prothonotary/Clerk of Courts

2 CENTS TO

**HENRY BLOOMBERG and SANDRA,
BLOOMBERG, Husband & Wife**

No. 538-2007 CD

Type of Pleading: **Certificate of
Service**

v.

Filed on Behalf of: **Plaintiff**

**THOMAS BAYER, t/d/b/a
BAYER CONTRACTING**

Defendant

Filed By:

**PATRICK LAVELLE, ESQ.
Pa. ID #: 85537
25 East Park Ave.
Suite #4
DuBois, PA. 15801
(814) 371-2232
(814) 371-4480 FAX**

ATTN
GD

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

**HENRY BLOOMBERG and SANDRA,
BLOOMBERG, Husband & Wife**

No. 538-2007 CD

Plaintiff

v.

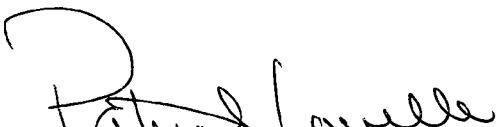
**THOMAS BAYER, t/d/b/a
BAYER CONTRACTING**

Defendant

CERTIFICATE OF SERVICE

I certify on this the 9th day of September, 2008, a true and correct copy of
Interrogatories and Request for Productions of Documents was served on
Counsel for the Defendant, via First Class U.S. Mail at the following address:

Toni M. Cherry
Gleason, Cherry and Cherry L.L.P.
P.O. Box 505
DuBois, PA. 15801-0505



Patrick Lavelle, Esq.
Counsel for the Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

FILED

HENRY BLOOMBERG and SANDRA BLOOMBERG, husband and wife, Plaintiffs :
vs.
THOMAS BAYER, t/d/b/a BAYER CONTRACTING, Defendant :

OCT 21 2008
m/10:15/08
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October, 2008, Defendant's Answers to Plaintiffs' First Set of Interrogatories was sent to PATRICK LAVELLE, ESQ., counsel for Plaintiffs, by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

PATRICK LAVELLE, ESQ.
Attorney at Law
25 East Park Avenue, Suite #4
DuBois, PA 15801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attorneys for Defendant

Dated: October 20, 2008

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

**HENRY BLOOMBERG and SANDRA,
BLOOMBERG, Husband & Wife**

No. 538-2007 CD

Plaintiffs,

Type of Pleading: Voluntary
Discontinuance

v.

Filed on Behalf of: **Plaintiff**

**THOMAS BAYER, t/d/b/a
BAYER CONTRACTING**

Defendant

Filed By:

**PATRICK LAVELLE, ESQ.
Pa. ID #: 85537
25 East Park Ave.
Suite #4
DuBois, PA. 15801
(814) 371-2232
(814) 371-4480 FAX**

S
FILED 1cc + 1 Cert of
m/2:00 Lmndisc issued to
DEC 03 2008 Atty Lavelle
(L)
William A. Shaw
Prothonotary/Clerk of Courts

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

**HENRY BLOOMBERG and SANDRA,
BLOOMBERG, Husband & Wife**

No. 538-2007 CD

Plaintiff

v.

**THOMAS BAYER, t/d/b/a
BAYER CONTRACTING**

Defendant

PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Please enter Plaintiff's voluntary discontinuance of the within action
pursuant to Pennsylvania Rule of Civil Procedure 229.

RESPECTFULLY SUBMITTED



Patrick Lavelle, Esq.
Counsel for the Plaintiff

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

**HENRY BLOOMBERG and SANDRA,
BLOOMBERG, Husband & Wife**

No. 538-2007 CD

Plaintiff

v.

**THOMAS BAYER, t/d/b/a
BAYER CONTRACTING**

Defendant

CERTIFICATE OF SERVICE

I certify on this the 2nd day of December, 2008, a true and correct copy of the foregoing Voluntary Discontinuance was served on Counsel for the Defendant by mailing of copy of same via First Class U.S. Mail, postage prepaid at the following address:

Toni M. Cherry
Gleason, Cherry and Cherry L.L.P.
P.O. Box 505
DuBois, PA. 15801-0505



Patrick Lavelle, Esq.
Counsel for the Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

**Henry Bloomberg
Sandra Bloomberg**

Vs.
**Thomas Bayer
Bayer Contracting**

No. 2007-00538-CD

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 December 3, 2008, marked:

Voluntary Discontinuance

Record costs in the sum of \$85.00 have been paid in full by Patrick Lavelle Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 3rd day of December A.D. 2008.

William A. Shaw

LM

William A. Shaw, Prothonotary