

07-1178-CD

Robert Miller vs Brian LaMorte

Robert Miller et al vs Brian LaMorte et al
2007-1178-CD

2007-1178-CD

[Home]

Allegheny County Prothonotary Civil Docket Report
GD-07-007082 *******CASE TRANSFERRED TO CLEARFIELD COUNTY*******

Run Date: 07/23/2007
 Run Time: 08:54:04 AM

Court Type: General Docket
 Case Type: Multiple Civil Action
 Judge: No Judge
 Current Status: Case Transferred

Related Cases:
 Jury Requested:
 Amount In Dispute:

Yes
 \$.00

Parties

-- Litigants --

ID	LName	FName	MI	Type	Address	Phone	Attorney
@1467461	Miller	Marcella	---	Plaintiff	No Default Address Available	--	Hendricks John D,
@1467460	Miller	Robert	---	Plaintiff	No Default Address Available	--	Hendricks John D,
ALLDEFT	Defendants	All	---	Defendant	No Default Address Available	--	--
@1467462	LaMorte	Brian	---	Defendant	635 South Brady Street Dubois PA 15801	--	--
@1467463	Mears	Robin	---	Defendant	635 South Brady Street Dublin PA 15801	--	--
@1467464	Sound Garden	---	---	Defendant	No Default Address Available	--	--

FILED
 JUL 24 2007
 M/11:00
 William A. Shaw
 Prothonotary/Clerk of Courts

-- Attorney --

ID	LName	FName	MI	Type	Address	Phone
27569	Hendricks	John	D	Plaintiff's Attorney	1712 Greenleaf Street Pittsburgh PA 15211-1020	(412) 3815900
33293	Acton	Maryann	C	Defendant's Attorney	No Default Address Available	--

-- Non Litigants --

ID	LName	FName	MI	Type	Address	Phone
ACPROTH	Allegheny County Prothonotary	---	---	Prothonotary	No Default Address Available	(412) 3505729

Alternative Names

ID	Name	Alternative Name
@1467463	Mears Robin	Sound Garden tdba

Docket Entries

Filing Date	Docket Type	Docket Text	Filing Party
04/04/2007	Complaint	Returnable 05/04/07.	Miller Robert
04/30/2007	Writ Returned Unexecuted	Writ has been returned without service. DEFT. WAS BOUGHT OUT IN 1997.	
04/30/2007	Sheriff Return	Sound Garden was served by Served - Agent or person in charge of Defendant(s) office or usual place of business Service Upon BRIAN LAMORTE with Complaint on 4/24/2007. OWNER	Miller Robert
04/30/2007	Sheriff Return	Brian LaMorte was served by Served - Defendant(s) Personally Served Service Upon BRIAN LAMORTE with Complaint on 4/24/2007.	Miller Robert
05/16/2007	Praecipe for Appearance	by Mary Ann Acton, Esquire	LaMorte Brian
05/17/2007	Preliminary Objections	brief in support and proposed order	Defendants All
07/03/2007	Notice of Service	of defendant Brian LaMorte t/d/b/a the Sound Garden & the Sound Garden's first set of interrogatories & request for production of documents & materials directed tp Plaintiff husband, Robert W. Miller served by first class mail 7/02/07 upon John Hendricks, Esquire.	LaMorte Brian
07/10/2007	Order of Court	Dated 05/09/07. Consent Order, that the above-captioned matter is transferred to the Court of Common Pleas of Clerafield County, Pa. with costs and fees for the transfer and removal of the record to be paid by the Plaintiffs. Pltfs. are ordered to take all steps necessary to complete the transfer. Strassburger J.	Miller Robert
07/23/2007	Case Transferred	As per Order of Court dated 05/09/07. Case is transferred to Clearfield County, PA. Strassburger, J.	Allegheny County Prothonotary

2007-1178-CD

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

ROBERT W. MILLER
and MARCELLA M. MILLER,
his wife,

CIVIL DIVISION

No.: GD07-007082

Plaintiffs,

Code: 011

vs.

BRIAN LaMORTE and
ROBIN L. MEARS,
t/d/b/a THE SOUND
GARDEN.

CONSENT ORDER OF COURT

FILED

JUL 24 2007

M/ 11:00 /
William A. Shaw
Prothonotary/Clerk of Courts

Defendants

Filed on behalf of
Plaintiffs

Counsel of Record for
This Party:

John D. Hendricks,
Esquire
Pa I. D. #27569
1712 Greenleaf Street
First Floor
Pittsburgh, PA 15211

(412) 381-5900

07 JUL 10 AM '07 51



01-07-2008,01DEER

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

ROBERT W. MILLER
and MARCELLA M. MILLER,
his wife,

CIVIL DIVISION

No.: GD07-007082

Plaintiffs,

vs.

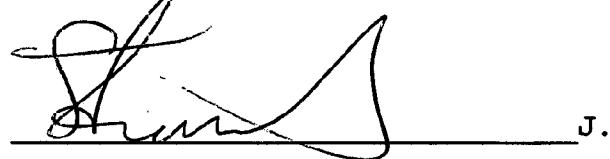
BRIAN LaMORTE and
ROBIN L. MEARS,
t/d/b/a THE SOUND
GARDEN,

Defendants.

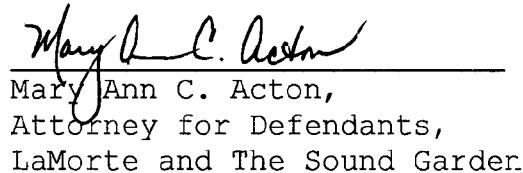
ORDER OF COURT

AND NOW, to-wit, this 9th day of May, 2007, upon agreement of the plaintiffs and defendants, Brian LaMorte and The Sound Garden, it is hereby ORDERED, ADJUDGED and DECREED that the above captioned matter is hereby transferred to the Court of Common Pleas of Clearfield County, Pennsylvania with cost and fees for the transfer and removal of the record to be paid by the plaintiffs. Further, Plaintiffs are ordered to take all steps necessary to complete the transfer.

BY THE COURT:

 J.

CONSENTED TO BY:


Mary Ann C. Acton,
Attorney for Defendants,
LaMorte and The Sound Garden


John D. Hendricks
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

ROBERT W. MILLER
and MARCELLA M. MILLER,
his wife,

CIVIL DIVISION

No.: GD07- 7082

Plaintiffs,

Code: 011

vs.

BRIAN LaMORTE and
ROBIN L. MEARS,
t/d/b/a THE SOUND
GARDEN and THE SOUND
GARDEN

Defendants

PLAINTIFFS' COMPLAINT
IN CIVIL ACTION

Filed on behalf of Plaintiffs

Counsel of Record for This
Party:

John D. Hendricks, Esquire
Pa I. D. #27569
1712 Greenleaf Street
First Floor
Pittsburgh, PA 15211

(412) 381-5900 *GRASSLAUNDRY*

64-67-33/882

60-67-33/882

07 APR -4 PH 1:50
PROBATE DIVISION
ALLEGHENY COUNTY

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by 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 a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lost money or property or other rights important to you.

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

**LAWYER REFERRAL SERVICE THE ALLEGHENY COUNTY BAR ASSOCIATION
920 CITY-COUNTY BUILDING
PITTSBURGH, PA 15219**

(412) 261-0518

COMPLAINT IN CIVIL ACTION

The Plaintiffs above named bring this civil action against the defendants above named upon a cause of action whereof the following is a statement:

1. That the Plaintiffs are adult individuals and residents of the County of Westmoreland and Commonwealth of Pennsylvania.
2. That the Plaintiffs, after reasonable inquiry, believe that the defendants, Brian LaMorte and Robin L. Mears, are adult individuals, and, at relevant times trade and do business as "The Sound Garden" within the Commonwealth of Pennsylvania and within the several states of the United States of America.
3. That after reasonable inquiry, the Plaintiffs believe that the defendant, The Sound Garden, is a business entity trading and doing business within the Commonwealth of Pennsylvania and within the several states of the United States of America.
4. That at all relevant times hereto, the defendants owned, supervised, maintained, operated and repaired a business facility in the municipality of DuBois, Pennsylvania, generally known as The Sound Garden where merchandise is offered and sold by the defendants to the general public for which the defendants receive financial compensation.

5. That on or about the 19th day of January, 2006, at or about 1:45 p.m., the aforesaid business location was open for business and open to the general public, that includes the Plaintiffs.

6. That on or about the aforesaid time and date and place, the Plaintiff, Robert W. Miller, was carefully and lawfully entering the aforesaid premises when he stumbled, tripped and fell down a number of steps onto the floor of the said business premise.

7. That at all relevant times hereto, the servants, employees and agents of the respective defendants were acting under the respective defendants' control, for the respective defendants' benefit and with the respective defendants' assent and consent.

8. That the below-stated negligent acts, conduct, omissions and/or particulars by the aforesaid defendants, acting on their own behalf and through their employees, servants and agents were substantial factors in bringing about the aforesaid fall and the resulting injuries and damages:

- a. In failing to properly design, construct, repair, maintain, supervise and operate the aforesaid business premises so that there would not be steps in the vicinity of the entry way of the aforesaid business establishment;
- b. In designing, constructing, repairing, maintaining, supervising and operating the aforesaid business premises in such a manner as to draw the attention of the business invitees away from the aforesaid dangerous and hazardous steps and the conditions thereof;
- c. In failing to hire appropriate and competent skilled workers for the design, construction, repair, maintenance, supervision

and operation of the aforesaid business premises, in particular the entry way into the said business premises;

- d. In failing to properly warn and advise those entering the aforesaid business premises, in particular, Robert W. Miller, of the dangerous and hazardous conditions existing therein;
- e. In failing to take the appropriate action after receiving notice of the dangerous and hazardous conditions existing in the said business premises;
- f. In failing to install proper structures so as to avoid the sudden change in elevation at the entry way of the aforesaid premises;
- g. In failing to properly mark the floor of the entry way, the steps and the main floor of the aforesaid business premise so that those entering the said premises, such as Robert W. Miller, would be able to recognize the change of the elevations in the floor and the existence of the aforesaid steps;
- h. In failing to properly design, construct, repair and maintain proper and safe handrails at the aforesaid entry way, steps and main floor;
- i. In failing to properly inspect the aforesaid business premise in order to discover the dangerous conditions prior to the injuries suffered by Plaintiff, Robert W. Miller;
- j. In creating and/or permitting the creation and existence of the illusion that the said business premise had level flooring, without the existence of the aforesaid steps;
- k. In violating the statutes, acts, codes, ordinances and regulations of the applicable governmental units regarding the design, construction, repair, maintenance and operation of a public facility open to the general public to provide safe conditions for the public;
- l. In designing, constructing, maintaining, supervising, operating and repairing the aforesaid business premises when the defendants knew or should have known of the aforesaid dangerous conditions;
- m. In other negligent conduct and omissions related to the aforesaid which may be disclosed through discovery.

9. That by reason of the aforesaid negligence of the said defendants, the Plaintiff, Robert W. Miller, was seriously and extensively injured, suffering and sustaining the following injuries, all or some of which may be permanent in nature:

- a. Internal injuries;
- b. Contusions, abrasions and lacerations to and on many parts of the body;
- c. Severe shock to the nervous system, resulting in digestive disturbances, insomnia, irritability, headaches and a complete change of personality;
- d. Fracture of the right hip;
- f. Other injuries arising out of the aforesaid occurrence.

10. That as a result of the foregoing negligence of the defendants, occurrence and injuries, the Plaintiff, Robert W. Miller, has suffered and will continue to suffer indefinitely into the future the following damages:

- a. Incurring and expending of large sums of money and incurring large expenditures for medicine and medical attention and other necessary and proper items in an attempt to stabilize and restore his health;
- b. Serious and permanent and great physical and mental pain and suffering;
- c. The inability to perform Plaintiff's normal and customary duties and activities;
- d. Deprivation of the ordinary pleasures of life;
- e. Embarrassment and humiliation;

f. Serious and great inconvenience;

g. Other damages arising out of the aforesaid injuries and damages.

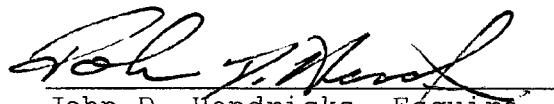
11. That as a result of the foregoing negligence of the defendants, occurrence and injuries, the Plaintiff-wife, Marcella M. Miller, has undergone and in the future will further undergo and suffer the following damages:

- a. The deprivation of the assistance, help and comfort of her husband, the Plaintiff, Robert W. Miller;
- b. The loss of her husband's care, comfort and consortium;
- c. Incurring and expending large sums of money for medicine and other medical attention and necessary and proper items in an attempt to stabilize and restore the health of her husband, the Plaintiff;
- d. The normal and customary duties and services that the Plaintiff-husband normally performs for the Plaintiff-wife;
- e. The expending of large amounts of time and effort in caring for her husband, in an attempt to stabilize and restore the Plaintiff-husband's health, and performing the duties normally performed by the Plaintiff-husband;
- f. Deprivation of the ordinary pleasures of life;
- g. Serious and great inconvenience;
- h. Other damages that are related to the aforesaid injuries and damages.

WHEREFORE, the Plaintiffs claim damages of the aforesaid defendants, jointly and severally, in an amount in excess of the sum of Twenty-Five Thousand (\$25,000.00) Dollars, for the recovery for which this suit is brought.

JURY TRIAL DEMANDED

RESPECTFULLY SUBMITTED:

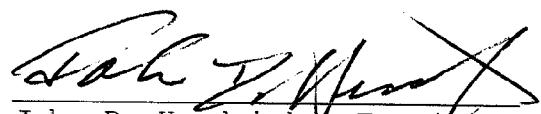


John D. Hendricks, Esquire
Attorney for Plaintiffs

VERIFICATION

I, JOHN D. HENDRICKS, Esquire, hereby acknowledge that I am counsel for the Plaintiffs in the foregoing action; that there is insufficient time to obtain Plaintiffs signature on this Verification; that I have read the foregoing document and the facts stated herein are true and correct to the best of my knowledge, information and belief.

I understand that any false statements herein are made subject to penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.


John D. Hendricks, Esquire
Attorney for Plaintiffs

Date: April 3, 2007

SHERIFF RETURN

Case No : GD-07-007082
Case Description : Miller etal vs LaMorte etal
Defendant : Brian LaMorte
Service Address : 635 South Brady Street Dubios, PA 15801 Clearfield
Writ Description : COMPLAINT
Issue Date : 4/4/2007

Service Status : Served - Defendant(s) Personally Served
Served Upon : BRIAN LAMORTE
Served By : NEVLING/COUDRIET
Served on : Tuesday, April 24, 2007 at 11:37
Service Method : Deputize

Robert Miller
Marcella Miller

vs

All Defendants
Brian LaMorte
Robin Mears
Sound Garden

SHERIFF RETURN

Case No : GD-07-007082
Case Description : Miller etal vs LaMorte etal
Defendant : Sound Garden
Service Address : 635 South Brady Street Dubois, PA 15801 Clearfield
Writ Description : COMPLAINT
Issue Date : 4/4/2007

Service Status : Served - Agent or person in charge of Defendant(s) office or usual place of business
Served Upon : BRIAN LAMORTE
Served By : NEVLING/COUDRIET
Served on : Tuesday, April 24, 2007 at 11:37
Service Method : Deputize

Robert Miller
Marcella Miller

vs

All Defendants
Brian LaMorte
Robin Mears
Sound Garden

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

Plaintiffs,

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/d/b/a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants.

CIVIL DIVISION

No. GDC7-7082

PRAECLPICE FOR APPEARANCE

Filed on Behalf of Defendants, Brian
LaMorte t/d/b/a The Sound Garden and
The Sound Garden

Counsel of Record for this Party:

MARY ANN C. ACTON
PA I.D. No. 33293
Maryann.Acton@LibertyMutual.com

BASHLINE & HUTTON
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434-3201

JURY TRIAL DEMANDED

E-FILED
MAY 16 2007
ALLEGHENY CO.
PROTHONOTARY

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing PRAECIPE FOR APPEARANCE was served via U.S. First Class Mail, postage pre-paid, on this 16th day of May, 2007, upon the following counsel of record:

John D. Hendricks Esquire
THE LAW OFFICES OF JOHN HENDRICKS
1712 Greenleaf Street
First Floor
Pittsburgh, PA 15211

(Attorney for Plaintiff)

Mary Ann C. Acton
Mary Ann C. Acton, Esquire
Attorney for Defendants, Brian LaMorte t/d/b/a
The Sound Garden and The Sound Garden

○ ○ *Strausburger
Venue*

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

Plaintiffs,

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/d/b/a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants.

CIVIL DIVISION

No. GD07-7082

ISSUE NO.:

DEFENDANTS' PRELIMINARY
OBJECTIONS TO PLAINTIFFS'
COMPLAINT PURSUANT TO
P.A.R.C.P. 1028(A)(1) AND BRIEF IN
SUPPORT OF

Filed on Behalf of Defendant:
Brian LaMorte t/d/b/a The Sound Garden
and The Sound Garden

Counsel of Record for this Party:

John D. Hendricks, Esquire
The Law Office of John Hendricks
1712 Greenleaf Street, First Floor
Pittsburgh, PA 15211

MARY ANN C. ACTON
PA I.D. No. 33293
Maryann.Acton@LibertyMutual.com

BASHLINE & HUTTON
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

07/17/07
07/17/07
07/17/07
07/17/07

RECEIVED

MAY 16 2007

11:10 A.M. COURT

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

ROBERT W. MILLER and) CIVIL DIVISION
MARCELLA M. MILLER, his wife,)
Plaintiffs,) No. G.G. 07-007082
v.)
BRIAN LaMORTE and ROBIN L. MEARS,)
t/d/b/a THE SOUND GARDEN and THE)
SOUND GARDEN,)
Defendants.)

NOTICE OF PRESENTATION

PLEASE TAKE NOTICE that the Defendants will present Preliminary Objections before the Motions Judge in Allegheny County on this ____ day of _____, 2007 at ___:00 a.m. or as soon thereafter as suits the convenience of the Court.

Respectfully submitted,

Mary Ann A. Weston

Mary Ann Acton, Esquire
Attorney for Brian LaMorte t/d/b/a The
Sound Garden and The Sound Garden

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

CIVIL DIVISION

No. GD 07-007082

Plaintiffs,

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/d/b/a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants

DEFENDANTS' PRELIMINARY OBJECTIONS TO
PLAINTIFFS' COMPLAINT PURSUANT TO Pa.R.C.P. 1028(a)(1)

AND NOW, come the Defendants, BRIAN LaMORTE t/d/b/a THE SOUND GARDEN and THE SOUND GARDEN, by and through their attorneys, Bashline and Hutton and Mary Ann C. Acton, and files the within Preliminary Objections to Plaintiffs' Complaint, and in support thereof avers as follows:

1. Plaintiffs alleges a cause of action in negligence against Defendants stemming from an alleged trip and fall accident occurring on January 19, 2006 at THE SOUND GARDEN in DuBois, Clearfield County, Pennsylvania.

2. In particular, Plaintiffs allege that Plaintiff-husband stumbled, tripped and fell down a number of steps onto the floor of The Sound Garden.

3. Defendant, BRIAN LaMORTE, at all times material hereto, resided in Clearfield County Pennsylvania.

4. Defendant, ROBIN L. MEARS, at all times material hereto, is believed to have resided in Indiana County, Pennsylvania.

5. Defendant, BRIAN LaMORTE, at all times material hereto, was the sole owner of THE SOUND GARDEN.

(P.O.)

6. Defendants BRIAN LaMORTE and THE SOUND GARDEN, at all times material hereto, had only one business location, that being the location of the accident in question, 635 South Brady Street, DuBois, Clearfield County, Pennsylvania.

7. Defendants BRIAN LaMORTE and THE SOUND GARDEN were served with process at 635 South Brady Street, DuBois, Clearfield County, Pennsylvania. (See Sheriff's Returns at Exhibits A and B).

8. Defendant ROBIN L. MEARS has not been served with process. Process could not be made on Defendant ROBIN L. MEARS at the address of THE SOUND GARDEN because Defendant ROBIN L. MEARS had no ownership interest in THE SOUND GARDEN at any time material hereto. (See Docket Entries at Exhibit C).

9. Plaintiff-Husband's alleged accident occurred inside THE SOUND GARDEN located in DuBois, Clearfield County, Pennsylvania.

10. Since Defendant BRIAN LaMORTE resides in Clearfield County, since Defendant THE SOUND GARDEN has only one location and that location being in Clearfield County, since Defendant ROBIN L. MEARS is believed to reside in Indiana County and having no ownership interest in THE SOUND GARDEN at any time material hereto, and since the accident is alleged to have taken place in Clearfield County, Pennsylvania, the Allegheny County Court of Common Pleas is an improper venue for this action.

11. Rule 1006 of the Pa.R.C.P states as follows: (a) except as otherwise provided by subdivisions (b) and (c) of this Rule, an action against an individual may be brought in and only in a county in which (1) the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law. *See* Pa.R.C.P 1000(a)(1).

12. Rule 2156 of the Pa.R.C.P. states as follows: (a) except as otherwise provided by Rule

1006(a.1) and by subdivision (b) of this rule, an action against an [unincorporated] association may be brought in and only in a county where the association regularly conducts business or any association activity, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of actions arose or in the county where the property or part of the property which is the subject matter of the action is located ..." *See* Pa.C.R.P. 2156.

13. Rule 2130 of the Pa.R.C.P. states as follows: (a)except as otherwise provided by Rule 1006(a.1) and by subdivision (b) of this rule, an action against a partnership may be brought in and only in a county where the partnership regularly conducts business, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of actions arose or in the county where the property or part of the property which is the subject matter of the action is located ..." *See* Pa.C.R.P. 2130.

14. Issuance of process for this action in Allegheny County was improperly made, resulting in a lack of jurisdiction over these defendants, and improper venue because (1) defendants BRIAN LaMORTE and THE SOUND GARDEN were served with process in Clearfield County (See Exhibits A and B), (2) the cause of action arose in Clearfield County, Pennsylvania, (3) THE SOUND GARDEN, whether treated as an unincorporated association or a partnership, does not regularly conduct business in Allegheny County, Pennsylvania, (4) the Complaint alleges that the condition of the property, which is located in Clearfield County, Pennsylvania, is the subject matter of this action, and (5) ROBIN L. MEARS, who had no ownership interest in THE SOUND GARDEN at any time material hereto, is believed to be a resident of Indiana County. (*See Slezinger v Bischak*, 224 Pa Super. 552, 307 A.2d 405, (1973)). Clearfield County Pennsylvania is the only county in which Plaintiffs may properly bring their action against the Defendants.

15. Accordingly, pursuant to Pa.R.C.P. 1028(a)(1), defendants BRIAN LaMORTE

t/d/b/a THE SOUND GARDEN and THE SOUND GARDEN, raise these Preliminary Objections and request that they be sustained on the basis of improper venue and lack of jurisdiction over the defendants.

WHEREFORE, defendants BRIAN LaMORTE and THE SOUND GARDEN respectfully request that the Court enter an Order granting these Preliminary Objections on the basis of improper venue and lack of jurisdiction over Defendants, and as such direct Plaintiffs to transfer this action to the Clearfield County Court of Common Pleas at Plaintiffs' expense.

Respectfully submitted,

BASHLINE & HUTTON

By:

Mary Ann C. Acton
MARY ANN C. ACTON, ESQUIRE
Attorney for Defendants
BRIAN LaMORTE and THE SOUND GARDEN

SHERIFF RETURN

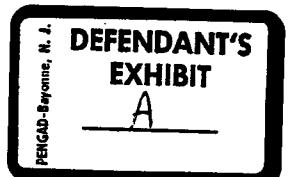
Case No : GD-07-007082
Case Description : Miller etal vs LaMorte etal
Defendant : Brian LaMorte
Service Address : 635 South Brady Street Dubios, PA 15801 Clearfield
Writ Description : COMPLAINT
Issue Date : 4/4/2007

Service Status : Served - Defendant(s) Personally Served
Served Upon : BRIAN LAMORTE
Served By : NEVLING/COUDRIET
Served on : Tuesday, April 24, 2007 at 11:37
Service Method : Deputize

Robert Miller
Marcella Miller

vs

Brian LaMorte
Robin Mears
Sound Garden



SHERIFF RETURN

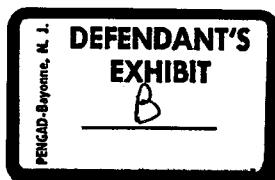
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Service Method : Deputize

Robert Miller
Marcella Miller

vs

Brian LaMorte
Robin Mears
Sound Garden



You can use your browser **BACK** button to return to previous page.

[\[New Case Number\]](#) [\[Service History\]](#) [\[Docket Report\]](#) [\[Account Information\]](#) [\[Home\]](#)

GD-07-007082

Filing Date: 04/04/2007 **Case Type:**
Filing Time: 1:49:04 **Court Type:**
Related Cases:
Judge: No Judge **Jury Requested:**
Amount In Dispute: \$.00

Miller et al vs LaMorte et al

Multiple Civil Action
General Docket
Complaint
Yes

*Click on PartyID hyperlink to see Alternative name for the party.

Parties								
-- Litigants --								
ID	LName	FName	MI	Type	Address	Initial Service Completion	Attorney	
@1467461	Miller	Marcella	---	Plaintiff	No Default Address Available	--	Hendricks John D,	
@1467460	Miller	Robert	---	Plaintiff	No Default Address Available	--	Hendricks John D,	
@1467462	LaMorte	Brian	---	Defendant	635 South Brady Street Dubois PA 15801	4/24/2007 11:37	--	
@1467463	Mears	Robin	---	Defendant	635 South Brady Street Dublin PA 15801	--	--	
@1467464	Sound Garden	---	---	Defendant	No Default Address Available	4/24/2007 11:37	--	

-- Attorney --								
ID	LName	FName	MI	Type	Address	Phone		
27569	Hendricks	John	D	Plaintiff's Attorney	1712 Greenleaf Street Pittsburgh PA 15211-1020	(412)3815900		

-- Non Litigants --								
No Listing								

*Click on DocketType hyperlink to see Judgments for that Docket.

Docket Entries						
Filing Date	Docket Type	Docket Text			Filing Party	Document
04/30/2007	Writ Returned Unexecuted	Writ has been returned without service. DEFT. WAS BOUGHT OUT IN 1997.				No Image
04/30/2007	Sheriff Return	Sound Garden was served by Served - Agent or person in charge of Defendant(s) office or usual place of business Service Upon BRIAN LAMORTE with Complaint on 4/24/2007. OWNER			Mill Ro	

DEFENDANT'S EXHIBIT

C

04/30/2007	Sheriff Return	Brian LaMorte was served by Served - Defendant(s) Personally Served Service Upon BRIAN LAMORTE with Complaint on 4/24/2007.	Miller Robert	Sheriff Return
04/04/2007	Complaint	Returnable 05/04/07.	Miller Robert	Document 1

Services								Complete Service History
Desc	Defendant	Service Address	Person Served	Served By	Service Date	Service Time	Status	
Complaint	Sound Garden	635 South Brady Street Dubois, PA 15801	BRIAN LAMORTE	NEVLING/COUDRIET	4/24/2007	11:37	Served - Agent or person in charge of Defendant(s) office or usual place of business	
Complaint	Brian LaMorte	635 South Brady Street Dubios, PA 15801	BRIAN LAMORTE	NEVLING/COUDRIET	4/24/2007	11:37	Served - Defendant(s) Personally Served	

If you don't have Adobe Acrobat Reader to view documents, you can get it [here](#).



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

CIVIL DIVISION

No. GD 07-007082

Plaintiffs,

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/d/b/a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants

BRIEF IN SUPPORT OF DEFENDANTS'
PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT
PURSUANT TO Pa.R.C.P. 1028(a)(1)

STATEMENT OF THE CASE

Plaintiffs filed this lawsuit against Defendants Brian LaMorte and Robin L. Mears t/d/b/a The Sound Garden, and The Sound Garden, in the Court of Common Pleas of Allegheny County, Pennsylvania. Plaintiffs' action against Defendants stem from a January 19, 2006 trip and fall accident occurring inside The Sound Garden, an electronic store, located in DuBois, Clearfield County, Pennsylvania.

At the time of the accident, and at all times material herein, The Sound Garden was owned solely by Defendant Brian LaMorte who resides in Clearfield County, Pennsylvania. It is believed that at the time of the accident, and at all times material herein, Co-Defendant Robin L. Mears resided in Indiana County, Pennsylvania. Further Defendant Brian LaMorte and The Sound Garden were served with process in Clearfield County, Pennsylvania. To date, Defendant Robin L. Mears has not been served with process. The only proper venue for Plaintiffs' action against Defendants Brian LaMorte t/d/b/a The Sound Garden, and The Sound Garden individually, is Clearfield County, Pennsylvania, the only county in which all of the defendants may be served, and the only

(Brief)

county in which the cause of action arose.

ARGUMENT

As set forth in Rule 1006(a)(1) of the Pa.R.C.P., an action against an individual may be brought in and only in a county in which the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any county authorized by law. Further, as set forth in Rules 2156 and 2130 of the Pa.R.C.P., actions against unincorporated associations and partnerships may only be brought in a county where the association or partnership regularly conducts business or association activity, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of actions arose or in the county where the property or part of the property which is the subject matter of the action is located. In this case, it is undisputed that the cause of action, i.e., the alleged trip and fall accident of January 19, 2006 occurred in Clearfield County Pennsylvania. It is also undisputed Defendants Brian LaMorte and The Sound Garden were served with the Complaint through deputized services in Clearfield County, Pennsylvania. That is, the Allegheny County Sheriff had deputized the Clearfield County Sheriff with a request to serve defendants at the business address of The Sound Garden, 635 South Brady Street, DuBois, Clearfield County, Pennsylvania. (See Exhibits A and B). Additionally, the Plaintiffs allege in the Complaint that the real property of THE SOUND GARDEN is the subject matter of this action and that property is located in DuBois, Clearfield County, Pennsylvania. Finally, THE SOUND GARDEN is located in DuBois, Clearfield County, Pennsylvania and does not regularly conduct business in Allegheny County, Pennsylvania. There are no allegations within the complaint that THE SOUND GARDEN regularly conducts business in any fashion in Allegheny County.

The Complaint is insufficient on its face to confer jurisdiction on any of the Defendants in Allegheny County, Pennsylvania. Because the Plaintiffs in this case could not effectuate proper

service of process on any of the Defendants in Allegheny County, Pennsylvania, at such moment that improper service was made, venue became improper. Salay u Baum, 427 Pa. 480, 235 A.2d 368 (1967). Given the facts of this case, the only competent court to hear this matter would be the Court of Common Pleas of Clearfield County, Pennsylvania. Rule 1006(e) mandates that Defendants' Preliminary Objections, given the facts of this case, must be sustained and Plaintiffs' action against Defendants should be transferred to the county of proper venue (Clearfield County) with costs and fees for transfer and removal of the record paid by Plaintiffs. As set forth in Slezinger u Bischak, 224 Pa. Super. 552, 307 A.2d 405 (1973) Pa.R.Civ.P., Rule 1006(e) may be utilized whenever improper venue is established, regardless of whether a party objects on either jurisdictional or venue grounds.

For the reasons set forth above, Defendants Brian LaMorte and The Sound Garden, respectfully requests that the Preliminary Objections be sustained, and that Plaintiffs' action be transferred at Plaintiffs' cost to the Court of Common Pleas of Clearfield County.

Respectfully submitted,

BASHLINE & HUTTON

By:

Mary Ann C. Acton
MARY ANN C. ACTON, ESQUIRE
Attorney for Defendants
BRIAN LaMORTE and THE SOUND GARDEN

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

CIVIL DIVISION

No. GD 07-007082

Plaintiffs,

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/d/b/a THE SOUND BARDEN and THE
SOUND GARDEN,

Defendants

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2007, upon
consideration of Defendants Brian LaMorte's and The Sound Garden's Preliminary Objections to
Plaintiffs' Complaint,

IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. Defendants' Preliminary Objections are hereby SUSTAINED;
2. Plaintiffs' action against Defendants Brian LaMorte and Robin L. Mears t/d/b/a The Sound Garden and The Sound Garden, in the court of Common Pleas of Allegheny County is extinguished and discontinued;
3. Plaintiffs' action against Defendants Brian LaMorte and Robin L. Mears t/d/b/a The Sound Garden and The Sound Garden, is transferred to the Court of Common Pleas of Clearfield County Pennsylvania for final adjudication. The costs and fees for transfer and removal of the record shall be paid by the plaintiffs. Plaintiffs are ordered to take all steps necessary to complete the transfer.

BY THE COURT:

J.

(Order)

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing DEFENDANTS' PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT PURSUANT TO P.A.R.C.P. 1028(A)(1) and BRIEF IN SUPPORT OF was served via U.S. First Class Mail, postage pre-paid, on this 16th day of May, 2007, upon the following counsel of record:

John D. Hendricks Esquire
THE LAW OFFICES OF JOHN HENDRICKS
1712 Greenleaf Street
First Floor
Pittsburgh, PA 15211

(Attorney for Plaintiff)

Mary Ann C. Acton
Mary Ann C. Acton, Esquire
Attorney for Brian Lamorte t/d/b/a The Sound
Garden and The Sound Garden

E-FILED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

**ALLEGHENY CO.
PROTHONOTARY**

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

Plaintiffs,

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/d/b/a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants.

CIVIL DIVISION

No. GD07-7082

ISSUE NO.:

NOTICE OF SERVICE OF
DEFENDANT BRIAN LAMORTE
t/d/b/a THE SOUND GARDEN AND
THE SOUND GARDEN'S FIRST SET
OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF
DOCUMENTS AND MATERIALS
DIRECTED TO PLAINTIFF-
HUSBAND ROBERT W. MILLER

John D. Hendricks, Esquire
The Law Office of John Hendricks
1712 Greenleaf Street, First Floor
Pittsburgh, PA 15211

Filed on Behalf of Defendant:
Brian LaMorte t/d/b/a The Sound Garden
and The Sound Garden

Counsel of Record for this Party:

MARY ANN C. ACTON
PA I.D. No. 33293
Maryann.Acton@LibertyMutual.com

BASHLINE & HUTTON
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

NOTICE OF SERVICE

I hereby certify that the original NOTICE OF SERVICE OF DEFENDANT BRIAN LAMORTE t/d/b/a THE SOUND GARDEN AND THE SOUND GARDEN'S FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF-HUSBAND ROBERT W. MILLER were served upon counsel set forth below, by first-class mail, postage prepaid, on 22 day of July, 2007.

John Hendricks, Esq.
1712 Greenleaf Street
First Floor
Pittsburgh, PA 15211

BASHLINE AND HUTTON

BY: Mary Ann C. Acton
MARY ANN C. ACTON, ESQUIRE
Attorney for Defendant,
Brian LaMorte t/d/b/a The Sound Garden
and the Sound Garden

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

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

Plaintiffs,

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/ d/ b/ a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants.

TO THE WITHIN PARTIES:

You are required to plead to the
within NEW MATTER within twenty (20)
days from the date of service thereof or
default judgment may be entered against
you.

Mary Ann C. Acton

MARY ANN C. ACTON, ESQ.
Attorney for Defendants

John D. Hendricks, Esquire
The Law Office of John Hendricks
1712 Greenleaf Street, First Floor
Pittsburgh, PA 15211

CIVIL DIVISION

No. 2007-1178-CD

ISSUE NO.:

ANSWER AND NEW MATTER

Filed on Behalf of Defendant:
Brian LaMorte t/ d/ b/ a The Sound Garden
and The Sound Garden

Counsel of Record for this Party:

MARY ANN C. ACTON
PA I.D. No. 33293
Maryann.Acton@LibertyMutual.com

BASHLINE & HUTTON
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

FILED No cc.
m/10:20am
AUG 24 2007
(im)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

CIVIL DIVISION

No. 2007-1178-CD

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/ d/ b/ a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants.

ANSWER AND NEW MATTER

AND NOW, come the Defendants Brian LaMorte t/ d/ b/ a The Sound Garden and The Sound Garden by their attorneys, Bashline & Hutton and Mary Ann C. Acton, Esquire and states that they have a full, just, complete and legal defense to the allegations contained in Plaintiffs' Complaint, and in support thereof in sets forth the following:

1. The allegations of Paragraphs 2, 3 and 4 of Plaintiffs' Complaint, identifying the defendants Brian LaMorte and Robin L. Mears as adult individuals owning and operating "The Sound Garden", a business entity within the Commonwealth of Pennsylvania are admitted in part and denied in part. It is denied that defendant Robin L. Mears owned, supervised, maintained, operated and repaired the business facility identified as The Sound Garden at anytime relevant hereto. To the contrary, Defendant, Brian LaMorte owns and operates The Sound Garden as a sole proprietorship and it is admitted that Defendant Brian LaMorte, owned, supervised, maintained, operated and repaired the business facility identified as The sound Garden at all times relevant hereto, although by making this admission, Defendant Brian LaMorte make no admission as to any

allegations of negligence or liability contained in the Plaintiffs' Complaint as all allegations of negligence and liability are denied in accordance with the allegations contained in paragraphs 2 and 3 of this Answer.

2. Defendants deny being negligent in general or as more particularly set forth in the Plaintiffs' Complaint. Defendants further deny that there was a dangerous or defective condition on the subject premises and defendants deny that any alleged condition of the subject premises, and/ or any acts or omission by the defendants, their servants, employees and agents was the proximate and legal cause of any alleged injuries and damages complained of by Plaintiffs herein. To the contrary, defendants have acted in a reasonable and proper manner, and in accordance with the standards applicable to these defendants. Accordingly, the averments contained in Paragraphs 7, and 8 and 8(a) through 8(m) Plaintiffs' Complaint are denied as stated.

3. Defendants are advised that they may set forth a general denial to the allegations contained in Plaintiffs' Complaint and accordingly those allegations of the Complaint which have not been expressly denied or admitted in the preceding paragraphs of this Answer, including Paragraphs 1, 5, 6, 9, 9(a) through (f), 10, 10(a) through 10(g), 11 and 11(a) through 11(h) of Plaintiffs' Complaint and accordingly, said paragraphs are denied in general in accordance with amended Rule 1029 of the Pennsylvania Rules of Civil Procedure and strict proof of the same is demanded at trial.

4. Defendants are advised by counsel that they need not set forth any further or more particular answer to the allegations contained in Plaintiffs' Complaint, as all such allegations which have not been either expressly admitted or expressly denied in this Answer, are denied in general in accordance with amended Rule 1029 of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendants, Brian LaMorte t/ d/ b/ a The Sound Garden and The Sound Garden demands that judgment be entered in their favor with costs in their behalf sustained.

NEW MATTER

By way of further and more complete Answer to the averments contained in Plaintiffs' Complaint, Defendants Brian LaMorte t/ d/ b/ a The Sound Garden and The Sound Garden set forth the following New Matter:

5. Plaintiff's Complaint fails to set forth a cause of action recognized at law.
6. Defendants are advised and therefore believe and aver that Plaintiffs' alleged injuries are the result of pre-existing and/ or unrelated medical problems as may be revealed through the discovery proceedings of this lawsuit and for which defendant is not liable or responsible.
7. Defendants while continuing to deny any negligence or liability on their part, aver that in the event that an accident occurred as alleged, then in that event, said accident was due to the contributory/ comparative negligence of the husband-Plaintiff, which allegations of negligence are pled in general in accordance with amended Rule 1030 of the Pennsylvania Rules of Civil Procedure.
8. Defendants while denying that a dangerous or defective condition existed on their premises as is alleged in Plaintiffs' Complaint, aver that in the event an accident occurred as alleged, then Plaintiffs' action is barred by reason of husband-Plaintiff's assumption of the risk and/ or voluntary assumption of the risk, which assumption of the risk is pled in general in accordance with amended Rule 1030 of the Pennsylvania Rules of Civil Procedure.
9. Defendants reserve the right to establish, as may be revealed through the discovery process of this lawsuit, that Plaintiffs' alleged accident and or injury was due to the acts of persons or parties other than these Defendants, whose acts were independent, superseding and intervening, and for which this defendant is not liable or responsible.

WHEREFORE, Defendants, Brian LaMorte and Robin L. Mears t/ d/ b/ a The Sound Garden and The Sound Garden demand that judgment be entered in their favor with costs in their behalf sustained.

JURY TRIAL DEMANDED.

BASHLINE & HUTTON

BY Mary Ann C. Acton
MARY ANN C. ACTON, ESQUIRE,
ATTORNEY FOR DEFENDANTS

Miller, Robert v. The Sound Garden, Brian LaMorte
GD07-7082

VERIFICATION

I, Mr. Brian Lamorte, on my own behalf and as a representative of The Sound Garden aver that the statements of fact contained in the attached ANSWER AND NEW MATTER are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

Dated: 8-15-07


Mr. Brian Lamorte

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing ANSWER AND NEW MATTER was served via U.S. First Class Mail, postage pre-paid, on this 20th day of August, 2007, upon the following counsel of record:

John D. Hendricks Esquire
THE LAW OFFICES OF JOHN HENDRICKS
1712 Greenleaf Street
First Floor
Pittsburgh, PA 15211

(Attorney for Plaintiff)

Mary Ann C. Acton
Mary Ann C. Acton, Esquire
Attorney for Brian Lamorte t/d/b/a The Sound
Garden and The Sound Garden

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

Plaintiffs,

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/ d/ b/ a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants.

CIVIL DIVISION

07-1178-CD
No. ~~GD07-7082~~

ISSUE NO.:

MOTION TO COMPEL

Filed on Behalf of Defendants:

BRIAN LaMORTE t/ d/ b/ a THE SOUND
GARDEN and THE SOUND GARDEN

Counsel of Record for this Party:

MARY ANN C. ACTON

PA I.D. No. 33293

Maryann.Acton@LibertyMutual.com

BASHLINE & HUTTON
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

FILED NO
3/11/05
MAR 26 2008

William A. Shaw
Prothonotary/Clerk of Courts

THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

CIVIL DIVISION
No. GD07-7082

Plaintiffs,

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/ d/ b/ a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants.

MOTION TO COMPEL

AND NOW come the Defendants, Brian LaMorte, t/ d/ b/ a The Sound Garden and the Sound Garden, by their attorneys, MARY ANN C. ACTON, ESQUIRE, and the Law Offices of BASHLINE & HUTTON, and presents their Motion to Compel Discovery Responses directed to Plaintiffs, Robert W. Miller and Marcella M. Miller, and in support thereof state as follows:

1. Plaintiff alleges a cause of action in negligence against Defendants stemming from an alleged trip and fall accident occurring on January 19, 2006 at The Sound Garden in DuBois, Pennsylvania. Plaintiffs seek damages for the injuries allegedly sustained by the husband-Plaintiff in that incident.

2. By correspondence dated July 3, 2007, counsel for Brain LaMorte t/ d/ b/ a The Sound Garden and The Sound Garden served upon counsel for Plaintiffs a set of Interrogatories and Request for Production of Documents.

3. Plaintiff did not respond to aforementioned discovery request, and by correspondence dated September 8, 2007 and November 5, 2007, counsel was requested to submit their client's discovery responses, or contact the undersigned counsel as to when discovery

responses were to be expected. (True and correct copies of said correspondence are attached hereto as Exhibit "A").

4. Plaintiff's counsel has not responded to the undersigned counsel's letters. Therefore attempts to confer with Plaintiffs' counsel and resolve this matter without Court action have failed.

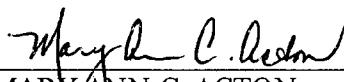
5. The requested discovery is necessary for the proper preparation of defenses in this case. Therefore, Defendant seeks an Order of Court compelling Plaintiffs to respond to the Defendant's discovery requests.

6. Pennsylvania Rules of Civil Procedure 4005, 4006, 4009.11 and 4009.12, as well as Local Rule W208.2 permit this Honorable Court to grant the relief requested.

WHEREFORE, Defendant prays this Honorable Court enter the attached proposed Order providing that Plaintiff shall serve Answers to interrogatories and Responses to Request for Production of Documents within fifteen (15) days from the presentation of this Motion.

Respectfully submitted,

BASHLINE & HUTTON


MARY ANN C. ACTON
Attorney for Defendants
Brian La Morte t/ d/ b/ a The Sound Garden and
The Sound Garden

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing MOTION TO COMPEL was served via U.S. First Class Mail, postage pre-paid, on this 19th day of March, 2008, upon the following counsel of record:

John Hendricks, Esquire
The Law Offices of John Hendricks
1712 Greenleaf Street, First Floor
Pittsburgh, PA 15211
(Counsel for Plaintiff)

Mary Ann C. Acton
Mary Ann C. Acton
Attorney for Defendants,
Brian LaMorte t/ d/ b/ a The Sound Garden and
The Sound Garden

LAW OFFICES
OF
BASHLINE & HUTTON*
SUITE 3500 ONE OLIVER PLAZA
210 SIXTH AVENUE
PITTSBURGH, PA 15222

TERRY L.M. BASHLINE
GERALD J. HUTTON†
BERNARD J. KELLY **

TELEPHONE: (412) 434-0201
FAX: (412) 434-0521
*Not a partnership

MARY ANN C. ACTON**
GREGORY ZOHORANACKY
†Also admitted in West Va.
**Also admitted in Ohio

September 08, 2007

John Hendricks, Esquire
The Law Offices of John Hendricks
1712 Greenleaf Street, First Floor
Pittsburgh, PA 15211

RE: Miller, Robert v. The Sound Garden, Brian LaMorte
Docket No.: GD07-7082
File No.: 302848010-001

Dear Mr. Hendricks:

This matter has come up on diary and I see that we are awaiting discovery responses which are now somewhat overdue. Would you please advise when we may reasonably expect to receive them? If I do not receive a response or the discovery responses by September 21, 2007 I will have no choice but to file a Motion to Compel.

Very truly yours,

Mary Ann C. Acton

Mary Ann C. Acton
Maryann.Acton@LibertyMutual.com

MCA/apw

EXHIBIT "A"

LAW OFFICES
OF
BASHLINE & HUTTON[†]
SUITE 3500 ONE OLIVER PLAZA
210 SIXTH AVENUE
PITTSBURGH, PA 15222

TERRY L.M. BASHLINE
GERALD J. HUTTON[†]
BERNARD J. KELLY ^{**}

TELEPHONE: (412) 434-0201
FAX: (412) 434-0521
*Not a partnership

MARY ANN C. ACTON^{**}
GREGORY ZOHORANACKY
†Also admitted in West Va.
**Also admitted in Ohio

November 05, 2007

John Hendricks, Esquire
The Law Offices of John Hendricks
1712 Greenleaf Street, First Floor
Pittsburgh, PA 15211

RE: Miller, Robert v. The Sound Garden, Brian LaMone
Docket No.: GD07-7082
File No.: 302848010-001

Dear Mr. Hendricks:

This matter has come up on diary and I see that we are awaiting supplemental discovery responses which are now somewhat overdue. Would you please advise when we may reasonably expect to receive them? If I do not receive a response or the discovery responses by November 15, 2007 I will have no choice but to file a Motion to Compel.

Very truly yours,

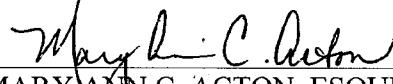
Mary Ann C. Acton
Mary Ann C. Acton
Maryann.Acton@LibertyMutual.com

MCA/apw

AFFIDAVIT

The undersigned, MARY ANN C. ACTON, ESQUIRE, attorney at the law firm Bashline & Hutton, 3500 One Oliver Plaza, 210 Sixth Avenue, Pittsburgh, PA 15222, who upon his oath, deposes and says as follows:.

1. I am counsel for Defendants, Brain LaMorte t/d/b/a The Sound Garden and the Sound Garden
2. The statements of facts contained in Defendants' Motion to Compel are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.



MARY ANN C. ACTON, ESQUIRE
PA.ID. NO.: 33293

Attorney for Defendants,
Brian LaMorte t/d/b/a The Sound Garden and
The Sound Garden

THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

CIVIL DIVISION
07-1178-CD
No. GD07-7082

Plaintiffs,

vs.

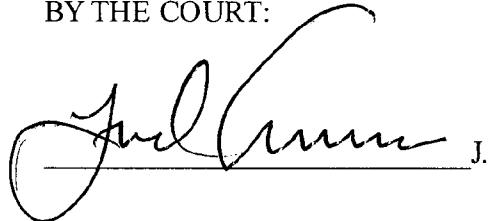
BRIAN LaMORTE and ROBIN L. MEARS,
t/ d/ b/ a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants.

ORDER OF COURT

AND NOW, to-wit, this 27th day of March, 2008, upon consideration of Defendants', Brian LeMorte t/d/b/a The Sound Garden and The Sound Garden, Motion to Compel, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Motion is GRANTED, and IT IS FURTHER ORDERED that Plaintiff shall serve Answers to Interrogatories and Responses to Request for Production of Documents within twenty (20) days from the date of this Order.

BY THE COURT:



FILED ^{1cc}
M 13:23 201 Atty
MAR 26 2008 Action

William A. Shaw
Prothonotary/Clerk of Courts 

FILED

MAR 26 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE 3/26/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney Other

Special Instructions:

THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

CIVIL DIVISION

07-1178-CD
No. GD07-7082

Plaintiffs,

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/ d/ b/ a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants.

SCHEDULING ORDER

AND NOW, this _____ day of _____, 2008, upon
consideration of Defendants', Brian LaMorte t/d/b/a The Sound Garden and The Sound Garden,
MOTION TO COMPEL AND BRIEF IN SUPPORT THEREOF thereof,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. Oral Argument upon the Motion will be held on _____
at _____ .m. in Courtroom No. _____ of the Clearfield County
Courthouse, Clearfield, Pennsylvania.
2. All parties shall file a separate brief concerning the issues raised in
Defendant's Motion to Compel on or before
_____, 2008.
3. Notice of entry of the Order shall be served on all parties by the
Prothonotary.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ROBERT W. MILLER
and MARCELLA M. MILLER,
his wife,

CIVIL DIVISION

No.: 2007-1178 CD

Plaintiffs,

vs.

BRIAN LaMORTE and
ROBIN L. MEARS,
t/d/b/a THE SOUND
GARDEN.

PLAINTIFFS' REPLY TO
NEW MATTER

Defendants

Filed on behalf of Plaintiffs

Counsel of Record for this
Party:

John D. Hendricks, Esquire
Pa. I. D. # 27569
1712 Greenleaf Street
First Floor
Pittsburgh, PA 15211

412-381-5900

FILED NO CC
MHO:SLB
APR 23 2008
(610)

William A. Shaw
Prothonotary/Clerk of Courts

PLAINTIFFS' REPLY TO NEW MATTER

AND NOW, come the Plaintiffs, by and through their attorney, John D. Hendricks, Esquire, and respectfully set forth the following reply to new matter filed by the defendants:

5. Said paragraph sets forth conclusions of law which require no reply. To the extent a reply may be deemed necessary, same is denied as stated; to the contrary, Plaintiffs' complaint sufficiently and properly sets forth facts to support a full and complete recovery against the defendants in the above matter.

6. Denied as stated; to the contrary, all injuries claimed by Plaintiffs are the direct and proximate result of the negligence of the defendants, for which the defendants are solely, jointly and severally fully liable.

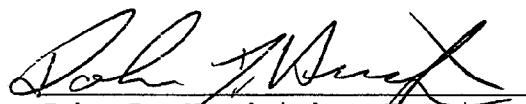
7. Said paragraph sets forth conclusions of law which require no reply. To the extent a reply may be deemed necessary, same is denied as stated; to the contrary, at all relevant times hereto the Plaintiff-husband was acting in a careful, safe and reasonable manner. As a further reply, Plaintiffs incorporate their complaint as though same were set forth in full herein.

8. Said paragraph sets forth conclusions of law which require no reply. To the extent a reply may be deemed

CERTIFICATE OF SERVICE

I hereby certify that the original of Plaintiffs' Reply to
New Matter has been served upon the below on the 17th day of
April 2008, via U.S. First Class Mail.

Mary Ann C. Acton, Esquire
Attorney for Defendant



John D. Hendricks, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ROBERT W. MILLER
and MARCELLA M. MILLER,
his wife,

CIVIL DIVISION

No.: 2007-1178-CD

Plaintiffs,

vs.

BRIAN LaMORTE and
ROBIN L. MEARS,
t/d/b/a THE SOUND
GARDEN.

VERIFICATION FOR
PLAINTIFFS' REPLY TO NEW
MATTER

Filed on behalf of
Plaintiffs

Counsel of Record for
This Party:

John D. Hendricks,
Esquire

Pa I. D. #27569

1712 Greenleaf Street
First Floor
Pittsburgh, PA 15211

(412) 381-5900

FILED
MAY 22 2008
NO CC
GK

William A. Shaw
Prothonotary/Clerk of Courts

VERIFICATION

I, Marcella M. Miller, hereby acknowledge that I am one the Plaintiffs in the foregoing action and the facts stated herein are true and correct to the best of my knowledge, information and belief.

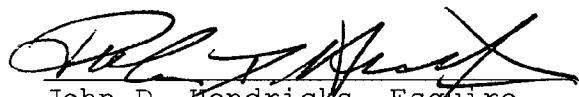
I understand that any false statements herein are made subject to penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Date: 4/22/08

Marcella M. Miller
Marcella M. Miller

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon all counsel of record via U.S. First-Class Mail, postage pre-paid, this 20th day of May, 2008.



John D. Hendricks, Esquire
Attorney for Plaintiffs

SA
FILED

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m/12/15/09
William A. Shaw
Prothonotary/Clerk of Courts

W# 9/6/09

6/10

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

Plaintiffs,

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/ d/ b/ a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants.

CIVIL DIVISION

No. 07-1178-CD

ISSUE NO.:

**NOTICE OF SERVICE OF
DEFENDANTS' ANSWERS TO
INTERROGATORIES**

Filed on Behalf of Defendant:
Brian LaMorte t/ d/ b/ a The Sound Garden
and The Sound Garden

Counsel of Record for this Party:

MARY ANN C. ACTON
PA I.D. No. 33293
Maryann.Acton@LibertyMutual.com

BASHLINE & HUTTON
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

3 A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

CIVIL DIVISION

No. GD07-1178-CD

Plaintiffs,

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/ d/ b/ a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants.

**NOTICE OF SERVICE OF DEFENDANTS'
ANSWERS TO INTERROGATORIES**

I hereby certify that **Defendants' Answers to Interrogatories** has been served upon Plaintiff's counsel, John Hendricks, Esquire, 1712 Greenleaf Street, First Floor, Pittsburgh, PA 15211, on this 30th day of January, 2009.

LAW OFFICES OF TERRY L.M. BASHLINE

Mary Ann C. Acton
MARY ANN C. ACTON
Attorney for Defendant
Brian LaMorte t/ d/ b/ a The Sound
Garden and The Sound Garden

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

Plaintiffs,

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/d/b/a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants.

CIVIL DIVISION

No. ~~CD~~07-1178-CD

DEFENDANT'S NOTICE OF
SERVICE OF SUPPLEMENTAL
DISCOVERY REQUESTS
ADDRESSED TO PLAINTIFFS,
ROBERT W. MILLER and
MARCELLA M. MILLER

Filed on Behalf of Defendant:

BRIAN LAMORTE t/d/b/a THE
SOUND GARDEN and THE
SOUND GARDEN,

Counsel of Record for this Party:

MARY ANN C. ACTON
PA I.D. No. 33293
Maryann.Acton@LibertyMutual.com

LAW OFFICES OF TERRY L.M.
BASHLINE
210 Sixth Avenue
Suite 3500, One Oliver Plaza
Pittsburgh, PA 15222
412-434-0201

Firm I.D. No. 150

JURY TRIAL DEMANDED

S **FILED** NO CC
OCT 30 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

CIVIL DIVISION

No. GD07-1178-CD

Plaintiffs,

vs.

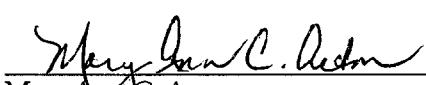
BRIAN LaMORTE and ROBIN L. MEARS,
t/d/b/a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants.

**DEFENDANT'S NOTICE OF SERVICE OF DISCOVERY REQUESTS
ADDRESSED TO PLAINTIFFS, ROBERT W. MILLER and MARCELLA M. MILLER**

I hereby certify that Defendant's Supplemental Interrogatories and Request for Production of Documents have been served upon Plaintiff's counsel, John Hendricks, Esq., on this 27th day of October, 2009.

LAW OFFICES OF TERRY L.M. BASHLINE



Mary Ann C. Acton
Attorney for Defendant,
Brian LaMorte t/d/b/a The Sound Garden and the
Sound Garden

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

Plaintiffs,

vs.

BRIAN LaMORTE and ROBIN L. MEARS,
t/d/b/a THE SOUND GARDEN and THE
SOUND GARDEN,

Defendants.

CIVIL DIVISION

Docket No. GD07-1178-CD

Issue No.

**PRAECLPSE TO PLACE
CASE AT ISSUE**

Filed on Behalf of Defendants:

Brian LaMorte t/d/b/a The Sound Garden
and The Sound Garden

Counsel of Record for this Party:

MARY ANN C. ACTON
PA I.D. No. 33293
Mary Ann.Acton@LibertyMutual.com

LAW OFFICES OF TERRY L.M.
BASHLINE
210 Sixth Avenue
K&L Gates Center, Suite 3500
Pittsburgh, PA 15222
412-434-0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

FILED NO CC
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF Clearfield COUNTY,
PENNSYLVANIA

ROBERT W. MILLER and
MARCELLA M. MILLER,
his wife,

CIVIL DIVISION

Docket No. GD07-1178-CD

Plaintiffs,

Issue No.

vs.

BRIAN LaMORTE and ROBIN L.
MEARS,
t/d/b/a THE SOUND GARDEN and
THE
SOUND GARDEN,

Defendants.

PRAECIPE TO PLACE CASE AT ISSUE

The undersigned party hereby certifies the accuracy of the following information to the Court, and requests that the Prothonotary assign an issue number to this case, list this case on the issue docket, and place it in order on the next available trial list:

1. At least sixty days have passed since the service of the original complaint on all Defendants.
2. All pleadings have been filed.
3. All preliminary motions and objections have been disposed of.
4. Discovery has been completed and the case is ready for trial.
5. Notice of the praecipe has been given to the attorney representing the Plaintiffs.

Notice of the praecipe has been given to Pro Se co-defendant, Robin L. Mears.

6. There are two (2) Plaintiffs (Robert W. Miller and his wife Marcella M. Miller) and their counsel is John D. Hendricks, Esq. There are three (3) Defendants (Brian LaMorte, Robin L.

Mears, t/d/b/a The Sound Garden and The Sound Garden) and counsel for Brian LaMorte and The Sound Garden is Mary Ann C. Acton. Robin L. Mears is a Pro Se Defendant.

7. According to documents filed in the case, there are no unrepresented parties in this case at this time.

8. According to documents filed in the case, there are no parties in this case who are represented only by out-of-county counsel

9. I estimate that the following number of days will be required for the trial of this case, including the time required for jury selection, closing arguments and charge:

No more than 1 trial day

2 to 3 trial days

4 to 6 trial days

7 to 10 trial days

11 to 15 trial days

More than 15 trial days

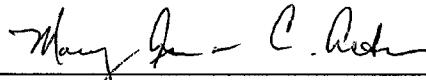
10. A jury trial has been requested in this case.

11. There are no claims for equitable relief.

JURY TRIAL DEMANDED

Respectfully submitted,

LAW OFFICES OF TERRY L.M. BASHLINE



Mary Ann C. Acton, Esquire
Attorney for Defendants,
Brian Lamorte, t/d/b/a The Sound Garden and
The Sound Garden

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing PRAECIPE TO PLACE CASE AT ISSUE was served via U.S. First Class Mail, postage pre-paid, on this 8th day of February, 2011, upon the following counsel of record:

John D. Hendricks, Esq.
THE LAW OFFICES OF JOHN HENDRICKS
1712 Greenleaf Street
First Floor
Pittsburgh, PA 15211

LAW OFFICES OF TERRY L.M. BASHLINE

BY: Mary Ann C. Acton
Mary Ann C. Acton, Esq.
Attorney for Defendants

CA

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

ROBERT W. MILLER and :
MARCELLA M. MILLER, his wife :
Plaintiffs :
vs. : NO. 2007-1178-CD
BRIAN LAMORTE and :
ROBIN L. MEARS, t/d/b/a :
THE SOUND GARDEN and :
THE SOUND GARDEN :
Defendants :

ORDER

AND NOW, this 16th day of February, 2011, it is the Order of
the Court that a Pre-Trial Conference in the above-captioned matter shall be and is
hereby scheduled for Thursday, April 14, 2011, at 2:30 P.M., in Judge's
chambers, Clearfield County Courthouse, Clearfield, PA.

Additionally, Jury Selection in this matter shall be and is hereby
scheduled for July 27, 2011 at 9:00 a.m. in Courtroom No. 2 of the Clearfield
County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:


PAUL E. CHERRY
Judge

FILED
01/16/2011
FEB 16 2011
S
William A. Shaw
Prothonotary/Clerk of Courts
100 Court St.

Atty Actor
Atty Hendricks

Robin Mears
635 South Brady St.
DuBois, PA 15801

FILED

FEB 16 2011

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

DATE: 2/16/11

____ You are hereby advised for all appropriate parties,
 The Plaintiff, R. Mead, Plaintiff, Attorney, _____ Other
 The Plaintiff, R. Mead, Plaintiff, Attorney, _____ Other
 Special Agent, _____

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

CA

ROBERT W. MILLER and :
MARCELLA M. MILLER, his wife :
Plaintiffs :
vs. : NO. 2007-1178-CD
BRIAN LAMORTE and :
ROBIN L. MEARS, t/d/b/a :
THE SOUND GARDEN and :
THE SOUND GARDEN :
Defendants :

O R D E R

AND NOW, this 15th day of April, 2011, it is the Order of the Court that a pre-trial conference in the above-captioned matter shall be and is hereby re-scheduled for Tuesday, May 17, 2011, at 11:30 AM in Judge's Chambers, Clearfield County Courthouse, Clearfield, PA.

Additionally, Civil Jury Selection in this matter shall be and is hereby scheduled for Thursday, October 27, 2011 at 9:00 AM in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania. All Plaintiffs, Defendants, and their attorneys must be present for Jury Selection.

5
FILED

04/19/2011
APR 18 2011

William A. Shaw
Prothonotary/Clerk of Courts

ICC Memorandum
to Atlys: Hendricks
Acton

and R. Mears
635 South Brady St.
DeBois, PA 15801

BY THE COURT:


PAUL E. CHERRY
Judge

FILED

APR 18 2011

William A. Shaw
Prothonotary/Clerk of Courts

D-E 41811

possible for serving all appropriate parties.

notary's office has provided service to the following parties:

Plaintiff(s) Attorney Other
 Plaintiff(s) Attorney Defendant(s) Attorney

Instructions:

William A. Shaw
Prothonotary
and Clerk of Courts
PO Box 549
Clearfield, PA 16830

Not Here
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Please

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FILED

APR 25 2011
10:30

William A. Shaw
Prothonotary/Clerk of Courts

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Robin L. Mears
635 South Brady St.
DuBois, PA 15801

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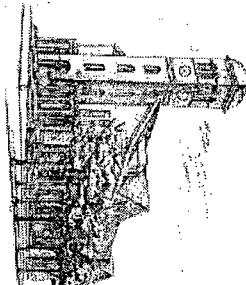
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Clearfield County Office of the Prothonotary and Clerk of Courts



William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant
David S. Ammerman
Solicitor

P.O. Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

To: All Concerned Parties

If it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

William A. Shaw, Prothonotary

DATE: 4/18/11

____ You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) X Plaintiff(s) Attorney _____ Other

____ X R. Meas Defendant(s) X Defendant(s) Attorney

____ Special Instructions:

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

ROBERT W. MILLER and :
MARCELLA M. MILLER, his wife :
Plaintiffs :
vs. : NO. 2007-1178-CD
BRIAN LAMORTE and :
ROBIN L. MEARS, t/d/b/a :
THE SOUND GARDEN and :
THE SOUND GARDEN :
Defendants :

ORDER

AND NOW, this 15th day of April, 2011, it is the Order of the Court that a pre-trial conference in the above-captioned matter shall be and is hereby re-scheduled for Tuesday, May 17, 2011, at 11:30 AM in Judge's Chambers, Clearfield County Courthouse, Clearfield, PA.

Additionally, Civil Jury Selection in this matter shall be and is hereby scheduled for Thursday, October 27, 2011 at 9:00 AM in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania. All Plaintiffs, Defendants, and their attorneys must be present for Jury Selection.

BY THE COURT:

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

/s/ Paul E. Cherry

PAUL E. CHERRY
Judge

APR 18 2011

Attest.

William H. Cherry
Prothonotary/
Clerk of Courts

**FORM OF PRE-TRIAL MEMORANDUM
FOR CLEARFIELD COUNTY**

The Court will expect the following in the nature of a Pre-Trial Memorandum* one week prior to the date of the Pre-Trial Conference.

1. A brief factual statement of the claim or defense. (This shall include all material facts to be proven by competent evidence.)
2. A list of all exhibits to be offered in evidence.
 - (a). A copy of all reports containing findings or conclusions of any physician who has treated, examined or has been consulted in connection with the injuries complained of, and whom a party expects to call as a witness at the trial of the case.
 - (b). A copy of all reports containing the substance of the facts, findings, opinions and a summary of the grounds or reasons for each opinion of any expert whom a party expects to call as a witness at trial.
3. Names and addresses of all witnesses expected to be called. Said witnesses shall be classified as liability, medical or damage witnesses.
4. A statement of the legal theory upon which the right of recovery or defense is predicted, which shall include citation of the authorities relied upon.
5. A brief description of the damages claimed and the basis therefor. There should be included a brief statement of:
 - (a). The principal injury or injuries sustained.
 - (b). Hospitalization and convalescence.
 - (c). Present disability.
 - (d). A summary of the special monetary damages.

(Include a detailed statement of loss of earnings to date and a detailed statement as to loss of future impairment of earning capacity, total medical expenses, property damages, and miscellaneous expenses.)
6. Any extraordinary evidentiary problems shall be set forth and briefed together with authorities.
7. A list of stipulations which the opposition reasonably can be expected to agree to for the purpose of avoiding the necessity of proof of matters as to which there is no basic dispute.
8. All special Points for Charge which the party wishes the court to charge on, together with authority therefor.
9. Estimated time for trial.

Counsel must be prepared to fix specific dates for trial at the Pre-Trial Conference. Dates of trial will be assigned at the Pre-Trial Conference.

***PLEASE NOTE: The original Pre-Trial Memorandum should be sent directly to the COURT ADMINISTRATOR'S OFFICE, with copies forwarded to opposing counsel.**

TRIAL DATES WILL BE ASSIGNED AT THE PRE-TRIAL CONFERENCE.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ROBERT W. MILLER
and MARCELLA M. MILLER,
his wife,

CIVIL DIVISION

No.: 2007-1178-CD

Plaintiffs,

vs.

BRIAN LaMORTE and
ROBIN L. MEARS,
t/d/b/a THE SOUND
GARDEN.

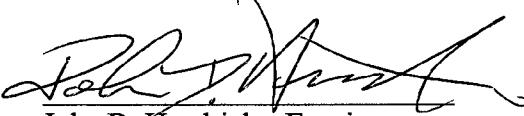
Defendants

PRAECLYPE

TO: PROTHONOTARY:

Please settle and discontinue the above matter (and satisfy, if any, verdict, judgment, executions, awards, decrees, equity, liens), ~~counterclaims or crossclaims~~ and plaintiffs' case or ~~as to garnishee only, D.S.P., M.L. and~~ Claims at the above captioned matter.

A true and correct hereof is being served upon all counsel of record.


John D. Hendricks, Esquire

Attorney for Plaintiffs

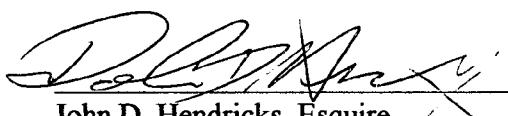
I. D. 27569

Address: 1712 Greenleaf Street, First Floor,
Pittsburgh, PA 15211-1020

Telephone: 412-381-5900

I hereby certify that the foregoing is a true and correct statement of the above case.

This statement is made subject to penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.


John D. Hendricks, Esquire
Attorney for Plaintiffs

FILED

JUN 15 2011

William A. Shaw
Prothonotary/Clerk of Courts